



AlMaghrib Institute

THE  
CODE  
OF SCHOLARS:  
USOOL AL-FIQH

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- What is halal and haram?
- Philosophy of the Islamic law
- Usool Al-Fiqh is a science that has an exact methodology for deriving and dictating Islamic Law.
- Anyone deprived from the principles of law are deprived from their God.

This class is beneficial because

- 1) We can set our priorities, in terms of the obligatory and recommended acts
- 2) It will help in understanding the complexity and perfection of the shari'ah and its suitability and flexibility for every time and purpose
- 3) It will help in going through different books of fiqh without getting bogged down by the differences in opinion. It will also help in understanding where those opinions came from.
- 4) It will help to develop the skill to recognize a fiqh opinion that is only pertinent to the 21<sup>st</sup> century
- 5) It will help in recognizing if a "proof" or evidence for a law is valid regarding your own fiqh issues.

Some recommended books on Usool Al Fiqh are:

- *"The Evolution of Fiqh"* by Bilal Phillips
- *"The Principles of Islamic Jurisprudence"* by Mohammad Ibn Hashim Kemal
- *"Introductory text in Islamic Jurisprudence"* by Imam Ahmad Al-Basyouni.

## **Breaking down the study of Usool al-Fiqh** Binder Page 3

### **History of Islamic Law:**

- The legal science which studies the historical factors behind the formulation of Fiqh (Islamic Law), its source (the Shari'ah), the emergence of Fuqaha' (Jurists), and the development of the various Mad'habs (Schools of thought) and their Usool afterwards, starting with the beginning of the revelation throughout the different eras until today.

#### **Example:**

The historical factors behind the formulation of the two primary schools of Usool:

- 1) ***Tareeq Al-Mutakallimeen***: that of the Ahl al-Hijaz who relied on Taqleed (uncritical following)
- 2) ***Tareeq Al-Fuqahaa***: that of Ahl al-Iraq who relied on Ijtihad (personal reasoning)

### **Rules of Islamic Law (Values of Islamic Law):**

- The study of the Hukum Shar'ee (The command of Allah) and its various values and related principles, including how that command is to be carried out and its conditions for doing so.
1. ***Hukum Takleefee*** (constituting a demand or an option).
    - a. Allah tells us to establish prayers and fast during Ramadan.
  2. ***Hukum Wad'ee*** (constituting an enactment).
    - a. The prerequisites of prayer (such as facing the qiblah).

#### **Example:**

1. ***Hukum Takleefee***: Wajib and Haram.
2. ***Hukum Wad'ee***: Sabab (cause) and Shart (condition)

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## **Sources of Islamic Law:**

- The study of the sources of legislation and enactment of Islamic Law and principal proofs of the Hukum Shar'ee, both the sources agreed upon by the majority of Muslim jurists and not agreed upon.

### **Example:**

- Sources about which there is agreement:
  - The Qur'an, Sunnah, Ijmaa', and Qiyas.
- Sources about which there is disagreement:
  - Statement of the Companions and Istihsaan (Juristic preference).

## **Dalalat ul-Alfaadh (Textual Implications):**

- The study of the implications of the legal texts, language codes, and the methodology and rules of interpretation. It is necessary in understanding how a ruling can be derived from certain evidences.

### **Example:**

Words used for a specific inclusion or exclusion such as Al-Mutlaq (the Absolute) and Al-Muqayyad (the Qualified) and the methodology practiced to determine such texts and reconciling between them.

## **Ijtihad and Taqleed (Personal Reasoning and Uncritical Following):**

- The study of the two methods Muslim Jurists follow in the process of legislation and enactment of the law and issuing the legal verdict (Fatwa).

### **Example:**

- Rules and regulations of Ijtihad and Taqleed, the conditions of the benefactors; both the Mujtahid and Muqallid (layman).
- The etiquettes of Fatwa (issuing the legal verdict) and the Mufti who is the authority of such a verdict.

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## **Al-Qawaa'ed Al-Fiqhiyyah:**

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- The study of the maxims governing the Islamic Law. Maxims of Islamic law refer to a body of abstracts rules which are derived from the detailed study of Fiqh itself. A legal code under which many Hukum Far'ee rules from various areas of the law are systematically arranged.

Hanafi scholars have developed five main principles for deriving fiqh called Al-Qawaa'ed Asliyah. Scholars of other mad'habs followed along and added sub rules under each maxim.

### **Example:**

"Certainty is not removed because of mere doubt" is one of five absolute maxims under which many other secondary maxims are arranged.

- In purification, one who is certain about his/her wudu and doubtful about the nullification of the wudu is considered in a state of purification.
- If you have a habit of making wudu and you walk of the restroom, and then you start prayer and start doubting that you have wudu, do you still need to make wudu? Then you have to assume that you didn't make wudu because there is certainty that you used the restroom but not making wudu.
- On the other hand, if you know you made wudu but aren't sure if you lost it, you should assume that you still have it because you are certain that you had made it.
- In business transactions, one who admits the reception of debt and doubts the payment (has no proof), even when they had in fact paid is considered liable until he/she provides a proof that suggests otherwise.

## **Maqasid Ash-Shari'ah:**

- The study of the intents and higher objectives of Shari'ah and Islamic Law. The general and specific purpose behind the enactment of a particular rule or value in different areas into Islamic Law. The study of the essential human values be it a

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necessity, a need or an accessory. This was developed by Imam Ash-Shatibi.

## **Example:**

five values that all the Prophets shared was to protect and preserving religion (deen), intellect, life, progeny, and wealth.

## **Welcome to Usool al-Fiqh**

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Usool al-Fiqh (as a genitive construction) is defined by its two components:

- **Usool (plural of Asl):**  
**The proof**, the foundation, that which is preferable (Al-Rajih), the continuous (original) rule and the original case in rules of Qiyas. [For the purpose of this class, we will be using the first definition]  
**Example:** Eating pig and a dead animal is haram, which is the Asl. In the case we are lost or in a situation that we have to eat or we die, then we can eat it and it becomes Wajib for us to eat it.
  - Usooli: jurist; one who knows the sources and evidence behind rulings→knows **why** it's wajib to pray five times a day
- **Al-Fiqh:**  
**Linguistically:** (faqih) The understanding for what is intended.  
**Technically:** (fiqh) The knowledge of the practical rules of Shari'ah acquired from the detailed evidences in the sources of Shari'ah; it does not deal with Aqeedah
  - Faqih: one who understands the rulings of Fiqh→knows it's wajib to pray five times a day

**Usool Al-Fiqh** (as a term made up of both words): The sciences of knowing what the sources of Fiqh are and how to use those sources, and the circumstances of the benefactor [i.e. the Mujtahid or the Layman (Muqlid-confined to one school of thought)].

A Mujtahid needs to follow all the rules of the Islamic law and cannot be confined in a single school of thought when deriving laws. He also needs to be aware of laws that were abrogated (Nasikh Mansookh).  
Sources: Qur'an, Sunnah, ijmaa', ijtihad

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### Example 1:

وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَمَا تُقَدِّمُوا لِأَنفُسِكُمْ مِنْ خَيْرٍ تَجِدُوهُ

عِنْدَ اللَّهِ إِنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ ﴿١١٠﴾

*110: Muhsin Khan: **And perform As-Salat (Iqamat-as-Salat), and give Zakat**, and whatever of good (deeds that Allah loves) you send forth for yourselves before you, you shall find it with Allah. Certainly, Allah is All-Seer of what you do. [Surah Al-Baqarah, 2:110]*

- This is a specific verse from the Qur'an. We learn from this verse that we must establish salah and we must give zakah. How did we come to that conclusion?
  - The order: Establish Salah!
- The Usool al-Fiqh principle: If Allah commands us to do something (Amr), the default is that it is compulsory for us to do it NOW.
  - Thus: establish salah is compulsory (fard).

### Example 2: The order: Give Zakah!

- The Usool Al-Fiqh principle: If Allah commands us to do something, the default ruling is that it is compulsory for us to do it.
  - Thus: Giving zakah is compulsory (fard).
- The way we can tell if something is wajib or mustahab and so on is by the way the order is given, such as by direct command or by encouragement

Subject: The legal proofs which lead to the deduction of rules of Fiqh.

### Purpose:

- To deduce the rules of Fiqh from indications that are provided in the sources of Islamic Law, and to help the jurist obtain an adequate knowledge of the sources of Islamic Law and of the methods of juristic deduction and inference.

### Objective:

- To regulate Ijtihad and guide jurists in their effort at deducing the law from its sources.
- To protect the Islamic System from corruption by those who are unfit to make Ijtihad but do so anyway [Surah A'raf (7:33) forbids speaking about Allah about which one has no knowledge]

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قُلْ إِنَّمَا حَرَّمَ رَبِّيَ الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَالْإِثْمَ وَالْبَغْيَ بِغَيْرِ  
الْحَقِّ وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزِّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا  
لَا تَعْلَمُونَ ﴿٣٣﴾

33: Muhsin Khan: Say (O Muhammad SAW): "(But) the things that my Lord has indeed forbidden are AlFawahish (great evil sins, every kind of unlawful sexual intercourse, etc.) whether committed openly or secretly, sins (of all kinds), unrighteous oppression, joining partners (in worship) with Allah for which He has given no authority, and **saying things about Allah of which you have no knowledge.**" [Surah al-A'raaf, 7;33]

### The need for Usool al-Fiqh:

- It became apparent when unqualified persons attempted to carry out Ijtihad and the risk of error and confusion in the development of Shari'ah became a source of anxiety for Muslim scholars.
- The only people that need to use it are the ones that are in the position of implementing the Shari'ah. It is not needed to be used by everyone.

### The ruling of Usool al-Fiqh:

- Fard Kifaya: obligatory upon the community except for the Mujtahid and Muslim jurist where it becomes Fard Ayn (personally obligatory).

### Other Usool al-Fiqh principles include (among others):

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- If Allah forbids us from something, the default is that it is forbidden to do that action.
- The Prophet's (sallallahu aleyhiwasalam) actions are proofs for Islamic Law.
  - To what extent? E.g.: he (sallallahu aleyhiwasalam) loved eating pumpkins; do we have to love it too?
- If a statement was made and no scholars comment (or make an objection) on it, that statement does not carry the strength of Ijmaa'.

Fiqh speaks about everything that is needed to be done in terms of the fard and the haram within our actions.

Usool al-Fiqh deals in where we get those rules and regulations from.



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### **Fiqh vs. Usool Al-Fiqh**

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Rulings vs. Where one derives rulings from and how to understand evidences in general

<b>Fiqh teaches us:</b>	<b>Usool Al Fiqh teaches us:</b>
It is only Fard to pray if one is sane and has reached the age of puberty	What does Haram mean, what is Mustahab, etc.
If someone talks in Salah, it breaks their Salah	How to derive a ruling from an Islamically acceptable source (i.e. How do we understand some commandments as being sunnah as opposed to being fard)
It is Haram to eat pork	Which humans are authorized to issue legal verdicts and deduce rules of Islamic Law from the sources of Islamic Law  In other words, what are the conditions of a Mujtahid and what should he do when sources of legislation apparently contradict
Giving Zakah is Fard	What can be used as proof for a fatwa (i.e. a Mufti can use the Qur'an or a Mufti cannot use today's horoscope)
If someone passes wind it breaks their wudu	How to reconcile between two different evidences when they appear to contradict each other
It is only Fard to pray if the time for Salah has arrived	How to interpret different language codes
It is Fard (compulsory) to pray five times a day	How to deduce a new ruling based on a ruling of an original case mentioned in the sources of Islamic Law

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How did scholars come to these Fiqh conclusions? They had to use the tools taught by Usool Al-Fiqh (The Methodology of deriving Fiqh)

- Fiqh deals with actions of you and I and within the details of those actions.
- Usool Al-Fiqh deals with where Islamic rules come from, or its sources, and why we can use the sources in such a manner.

### **2. Where do these Usool al-Fiqh Principles come From?**

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Just like specific Fiqh rulings (like praying five times a day) need proof, such is the case with the principles of Fiqh. Here we will look at where principles/codes come from.

#### **One: From the Qur'an**

**Example:** There is an Usool al-Fiqh principle that "there can be no commandment upon a person which is more than what that person is capable of."

This is derived from the verse:

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ رَبَّنَا لَا  
تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا إِكْرًا كَمَا حَمَلْتَهُ  
عَلَى الَّذِينَ مِنْ قَبْلِنَا رَبَّنَا وَلَا تُحَمِّلْنَا مَا لَا طَاقَةَ لَنَا بِهِ ۖ وَاعْفُ عَنَّا وَاعْفِرْ  
لَنَا وَارْحَمْنَا أَنْتَ مَوْلَانَا فَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ ﴿٢٨٦﴾

286: Muhsin Khan: **Allah burdens not a person beyond his scope.** He gets reward for that (good) which he has earned, and he is punished for that (evil) which he has earned. "Our Lord! Punish us not if we forget or fall into error, our Lord! Lay not on us a burden like that which You did lay on those before us (Jews and Christians); our Lord! Put not on us a burden greater than we have strength to bear. Pardon us and grant us Forgiveness. Have

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*mercy on us. You are our Maula (Patron, Supporter and Protector, etc.) and give us victory over the disbelieving people. [Surah Al-Baqarah, 2:286]*

With this ayah, we cannot excuse ourselves from the obligatory acts in Islam without a valid reason. This is for the optional acts in Islam or for those with valid reasons.

### Two: From the Sunnah

**Example:** There is an Usool al-Fiqh principle that states, "If we are commanded to do something, the default ruling is that it is compulsory for us to do it."

If it is an order and command, the thing would become wajib and we need to do it immediately, but if He gave a command with only words of encouragement without direct command, it would be considered mustahab.

This is derived from the statement of the Prophet SAW,

*"If it were not for the burden placed on my Ummah, I would have commanded the use of Miswak at each Salah." [Agreed Upon]*

### Three: From the Arabic language

**Example:** There is an Usool al-Fiqh principle that states, "If a command is given it requires that the person do it immediately."

This is derived from the science of the language, something that linguists understand. For example, they'll say, if a master tells his servant, "Get me water," that servant would be blameworthy if he delayed in bringing the water.

The Qur'an was revealed in clear, pure Arabic language "lisanin Arabeeyin mubeen." We can understand the language of the Arabs and their culture and the way they use certain terms to understand the Qur'an.

### Four: From Logic

**Example:** There is an Usool al-Fiqh principle that states, "If two Mujtahids disagree on a specific ruling then one of them is wrong."

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This is derived from pure logic. If two people make two opposing opinions, one says apples and the other says oranges, then logically one of them is wrong. However, this only refers to completely contradictory rulings. For example, some pray two rak'ahs before 'Asr and some pray 4, but both are justified.

Also, both opinions could be acceptable, even if only one was correct. The sahaba once differed on when to pray 'Asr, as Muhammad (sallallahu aleyhiwasalam) told them not to pray until they had reached their destination. As the sun began setting, some Sahaba decided the Prophet (sallallahu aleyhiwasalam) only meant they should hurry, not that they should actually miss the prayer, and decided to pray. Another group decided to take the Prophet (sallallahu aleyhiwasalam) literally and prayed 'Asr after the sun had set. Muhammad (sallallahu aleyhiwasalam) accepted both approaches, but those who prayed on time chose the correct option according to Sheikh Uthaymin rahimahu Allah.

### **History of Usool al-Fiqh**

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#### **Era of the Prophethood:**

No need for methodology because solutions to problems were obtained through either divine revelation or the Messenger's (sallallahu aleyhiwasalam) direct ruling. Many Usool principles were founded and obviously practiced by the Messenger of Allah (sallallahu aleyhiwasalam) and therefore laid the foundation down for this science.

After the Prophet (sallallahu aleyhiwasalam) died, the first two sources were established, Qur'an and Sunnah, and Ijmaa' and Qiyas began coming out

#### **Example:**

Encouraging Ijtihaad of the Sahaba:

*"If the Hakim exerts an Ijtihaad and appeared to be correct, he will get double reward and if the Hakim exerts an Ijtihaad and appeared to be wrong he will get one reward." [Bukhari and Muslim]*

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The usage of Qiyas in comparing a kiss during the month of Ramadhan to rinsing one's mouth, as both don't break the fast.

### **Era of the companions:**

- Their decisions remained in close contact with the teaching of the Messenger of Allah(sallallahu aleyhiwasalam) as a source of law.
- Their decisions were mainly inspired by the Messenger's(sallallahu aleyhiwasalam) precedent.
- They exercised Ijtihad and Qiyas widely to answer many unprecedented events.
- The principle of Ijmaa' was developed.

***Ibn Umar:*** "It is feared that rocks fall down from the skies upon you, I tell you the Messenger of Allah (sallallahu aleyhiwasalam) said such and such and you tell me Abu Bakr and Umar said such and such."

***Umar ibn Al-Khattab:*** "Recognize similar cases and, using your intelligence, make an analogy."

Umar was known for doing shura and deriving laws by using reasoning based on the sources

### **Era of the Taabi'een:**

At the time of the Taabi'een, many new nations entered into Islam. With those nations came new issues. Many of the Mujtahids of this time period fell back on specific principles to derive those Islamic rulings. Disputation and diversity of juristic thought in different quarters accentuated the need for clear guidelines. New sources for deriving fiqh were developed at this time, including Al-Istihsaan (Juristic Preference).

Imam Malik considered the practice of people of Madinah to be a source

**The first Usool al-Fiqh book by Imam Shaafi'ee:** In 204H (820 CE), he wrote a book called Ar-Risaalah. In it he gathered and articulated the principle by which a scholar could come to his conclusions. He called his book Ar-Risalah (the message). His methods weren't based so much on philosophy as his mad'hab now uses.

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## Two Classical Approaches

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	<b>The Theoretical Approach</b> Formed independently of fiqh	<b>The Deductive Approach</b> Formed in light of fiqh
<b>Name of School</b>	Tareeqat Al-Mutakallimeen, Usool Ash-Shafi-eyyah	Tareeqat Al-Fuqahaa, Usool Al-Hanafiyyah
<b>Mad'hab of School</b>	Maliki, Shafi'ee, Hanbali, and the Mu'tazilah (aka Usool Al-Shafa'eeye)	Hanafi - Limited amount of linguistic and very practical. They would follow the imams.
<b>Main Approach</b>	<p>1. The exposition of the theoretical doctrine prior to the application of the issue of Fiqh.</p> <p>2. Articulating the theoretical principles of Usool al-Fiqh independently without necessarily attempting to relate these to Fiqh itself. (like discussing the physical attributes of angels)</p> <p>3. Engaging into complex issues of philosophical character which may or may not contribute to the development of the practical rules of Fiqh. Such as the issue of the Prophet's(sallallahu aleyhiwasalam) infallibility before the prophetic mission. They only discuss these in order to perfect the theory.</p>	<p>1. The theory is formulated in the light of its application to relevant issues of Fiqh.</p> <p>2. In a pragmatic approach, principles of Usool Al-Fiqh are expounded in conjunction with Fiqh itself. (If it didn't have any effect on fiqh, it was not to be discussed for the purpose of deriving Usool principles)</p> <p>3. A principle of Usool which appears to be in conflict with an established Fiqh principle entails an adjustment to the theory in different ways. Theoretical conversations would not be found in this Mad'hab. Since it doesn't concern the practicality of the theory. Like we won't concerns ourselves about the infallibility before Prophethood.</p>
<b>Major Books</b>	<p>1. Al-Mutamad by Abdul Hussayn Al-Bassri 436H (1044 CE).</p> <p>2. Al-Burhan by Imam Al-Haramayn Al-Juwayni 487H (1094 CE).</p> <p>3. Al-Mustasfa by Al-Ghazali 505H (1111 CE).</p> <p>4. Al-Mahsoul by Fakhruddin Al-Razi 606H (1209 CE).</p> <p>5. <i>Al-Ihkaam Fi Usool Al-Ahkam</i> by Al-Aamidi 713H (1314 CE).</p>	<p>1. <i>Kitab fil Usool</i> by Abul Hassan Al-Karhi 340H (951 CE).</p> <p>2. <i>Usool Abu Bakr Al-Razi Al-Jassas</i> 370H (980 CE).</p> <p>3. <i>Ta'sees Al-Nadhar</i> by Al-Dabboossi 430H (1038 CE).</p> <p>4. <i>Usool Al-Bazdawi</i> 482H (1089 CE).</p> <p>5. <i>Usool Al-Sarakhsi</i> 490H (1096 CE).</p>

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- The Theoretical or rational approach was used by the people in the Hijaz area only to derive principles of Usool Al-Fiqh. After deriving the principles from the Qur'an and Sunnah, scholars attempted to fit their mad'habs opinions to them. If they didn't fit, they were to be modified.
  - When it came to deriving Islamic Law, they relied on Taqleed, limiting themselves to whatever texts they had, and were therefore also known as the literalists. Those in the Hijaz area followed this approach because they had access to many more ahadith.
  - Independent of previous imams' opinions
  - Don't look into opinions of fiqh
  - Engage in conflicts of theory and philosophy for no reason
    - E.g.: infallibility of Prophet (sallallahu aleyhiwasalam) before Prophethood→ We're not obliged to follow his actions before he became a Prophet
  - The followers of the mad'hab developed the principles
- The Deductive or traditional approach was used by the people of Iraq who were exposed to Persian culture, which emphasized rational reasoning. It is called traditional because the principles of Usool were derived based on Imam Abu Hanifa's opinions on fiqh issues. If one of his opinions contradicted a principle of Usool, the principle itself had to be modified. This is why it is difficult for the Hanafi school of thought to say the imam was wrong. Imam Karkhi says: if it contradicts the statement of the sheikh, then maybe the source can be understood in two ways or this opinion is a better one
  - When it came to deriving Islamic Law, Imam Abu Hanifa used Ijtihad if he had no available source (though there could have been sources which he didn't know about). Therefore, his mad'hab is rational in terms of how Islamic Law was derived→practical and easy to understand
  - number of principles limited because Hanafis just follow the example of the imam

Even though there is only one major mad'hab that used Tareeqat Al-Fuqaha, it has the maximum number of followers. In general

- The Hanbali mad'hab is followed by those in Saudi Arabia

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- The Maliki mad'hab is followed by those in North Africa and Spain
- The Shafi'ee mad'hab is followed by those in Yemen, East Africa and Indonesia, and Malaysia
- The Hanafi mad'hab is followed by those in India, Pakistan, Turkey, Iraq, and most other Muslims in the world

### **Tareeqat Al-Muta'akhireen:**

This is a third approach to deriving principles of Usool which developed after the first two and reconciled them both. Most contemporary scholars use this approach.

### **Most books come from the Hanafi approach**

Badee'un Midham: Imam As-Sa'ati 694 H

Tanqeeh Al-Usool: Sadrush Shar'iah 747 H

Jam'ul Jawaami: Tajuddin As-Subki (Shafi') 771 H

At-Tahreer: Abil Humam Al-Hanafi 861 H

Musallam Ath-thuboot: Ibn Abdish-Shakoor (Hanafi) 1119 H

Fawatih Ar-Rahamoot (commentary on ^): Ibn Nidhamuddin Ansari



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# PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

## CHAPTER ONE: THE ANATOMY OF AN ISLAMIC RULE/LAW

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### 1. The Pillars of Islamic Rule (hakamah)

- **Law Maker (Al-Haakim)**

- Every specific Islamic rule has to come from a law maker, Allah.

مَنْ أَهْتَدَىٰ فَإِنَّمَا يَهْتَدِي لِنَفْسِهِ ۖ وَمَنْ ضَلَّ فَإِنَّمَا

يَضِلُّ عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ ۚ وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ نَبْعَثَ

رَسُولًا ﴿١٥﴾

15: Muhsin Khan: Whoever goes right, then he goes right only for the benefit of his ownself. And whoever goes astray, then he goes astray to his own loss. No one laden with burdens can bear another's burden. And We never punish until We have sent a Messenger (to give warning). [Surah Al-Isra, 17:15]

رُسُلًا مُّبَشِّرِينَ وَمُنذِرِينَ لِئَلَّا يَكُونَ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ

الرُّسُلِ ۚ وَكَانَ اللَّهُ عَزِيزًا حَكِيمًا ﴿١٦﴾

165: Muhsin Khan: Messengers as bearers of good news as well as of warning in order that mankind should have no plea against Allah after the Messengers. And Allah is Ever All-Powerful, All Wise. [Surah An-Nisa, 4:165]

- **The Law (Al Hukm Ash-Shar'ee)**

- The Islamic rule in the form of command which came from the law maker, Allah ta'ala.
- Establishes Islamic rule which falls in different categories (wajib, haram, etc.)

- **Meant for someone (Al-Mahkoom 'Alayh)**

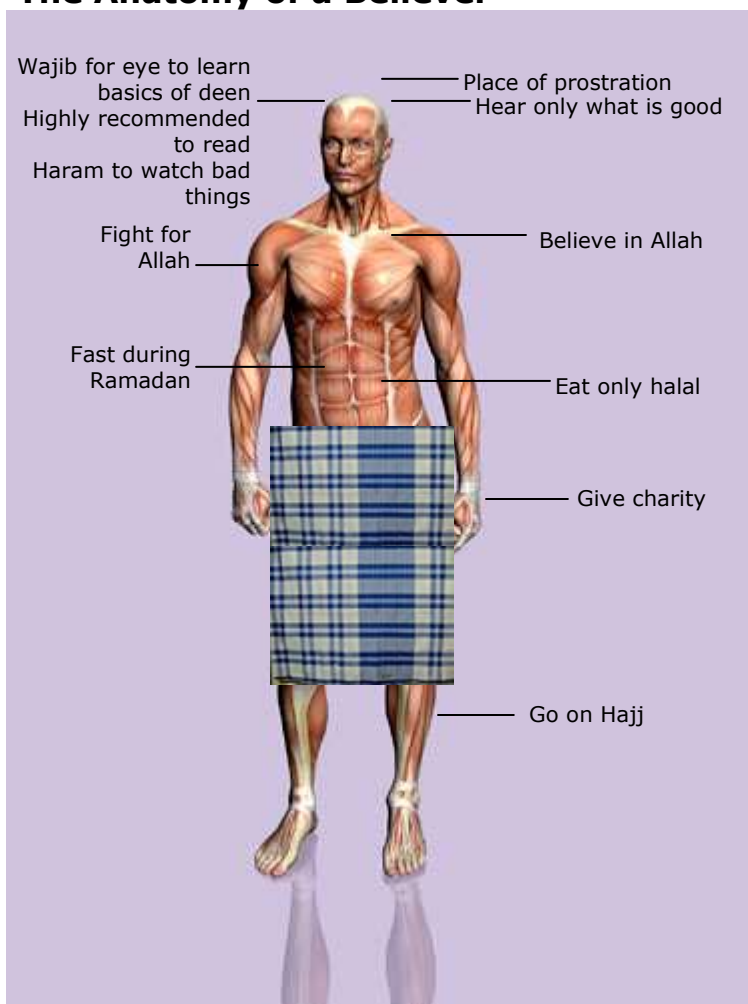
- That rule has to be meant for someone who is the accountable party (Mukallaf-the servant of Allah).
- It's haram/wajib in regards to whom? Those who are competent, young, sane, etc.

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

- The individual who is obligated to practice hukm Ash-Shar'ee
- **Applied to whom (Al-Mahkoom Feeh)**
  - That rule has to be applied to one of the actions of that servant of Allah. That is the subject matter of Hukm.
  - Apply rules to actions and statements
- **Extracted by whom?**
  - That rule is extracted by someone knowledgeable enough to extract it—the Mujtahid or Mufti.
- **How does he/she extract?**
  - The Mujtahid operates and extracts in a specific way and code; using the principles of Usool Al-Fiqh.
- **What do they filter?**
  - He or she knows how to regard and disregard 'tips' based on his/her knowledge of Usool Al-Fiqh.
  - 'Ulama filter what sources are important for practical use
- **What do they do with that knowledge?**
  - Then that Mujtahid tells the general public what Allah wants of them.

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

### The Anatomy of a Believer



Binder page 12

## 2. Who is Law Maker? Al-Haakim

- Allah is the law maker!

أَوَلَمْ يَرَوْا أَنَّا نَأْتِي الْأَرْضَ نَنْقُصُهَا مِنْ أَطْرَافِهَا وَاللَّهُ يَحْكُمُ لَا مُعَقَّبَ

لِحُكْمِهِ ۖ وَهُوَ سَرِيعُ الْحِسَابِ ﴿٤١﴾

41: Muhsin Khan: See they not that We gradually reduce the land (of disbelievers, by giving it to the believers, in war victories) from its outlying borders. **And Allah judges, there is none to put back His Judgment and He is Swift at reckoning.** [Surah Ar-Ra'd, 13:41]

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

مَا تَعْبُدُونَ مِنْ دُونِهِ إِلَّا أَسْمَاءَ سَمَّيْتُمُوهَا أَنْتُمْ  
وَعَبَاؤُكُمْ مَا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ إِنْ الْحُكْمُ إِلَّا لِلَّهِ أَمَرَ أَلَّا  
تَعْبُدُوا إِلَّا إِيَّاهُ ذَلِكَ الدِّينُ الْقَيِّمُ وَلَكِنَّ أَكْثَرَ النَّاسِ لَا  
يَعْلَمُونَ ﴿٤٠﴾

- 40: Muhsin Khan: "You do not worship besides Him but only names which you have named (forged), you and your fathers, for which Allah has sent down no authority. **The command (or the judgment) is for none but Allah. He has commanded that you worship none but Him (i.e. His Monotheism), that is the (true) straight religion, but most men know not.** [Surah Yusuf, 12:40]
- **Can intelligence be the law maker? NO**
  - Allah would not have sent messengers
  - People are not accountable until they receive guidance→through Messengers
  - Rebuttal to Mu'tazilat
  - Follow Allah's law, however, respect the rule of the land if you have no choice, i.e. car insurance

مَنْ أَهْتَدَىٰ فَإِنَّمَا يَهْتَدِي لِنَفْسِهِ وَمَنْ ضَلَّ فَإِنَّمَا  
يَضِلُّ عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ نَبْعَثَ  
رَسُولًا ﴿١٥﴾

15: Muhsin Khan: Whoever goes right, then he goes right only for the benefit of his ownself. And whoever goes astray, then he goes astray to his own loss. No one laden with burdens can bear another's burden. And We never punish until We have sent a Messenger (to give warning). [Surah Al-Isra, 17:15]

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

رُسُلًا مُبَشِّرِينَ وَمُنْذِرِينَ لِئَلَّا يَكُونَ لِلنَّاسِ عَلَى اللَّهِ حُجَّةٌ بَعْدَ

الرُّسُلِ وَكَانَ اللَّهُ عَزِيزًا حَكِيمًا ﴿١٦٥﴾

- 165: Muhsin Khan: Messengers as bearers of good news as well as of warning in order that mankind should have no plea against Allah after the Messengers. And Allah is Ever All-Powerful, All Wise. [Surah An-Nisa, 4:165]

- **Is the Prophet of Allah a law maker?**

- He (sallallahu aleyhiwasalam) contributed to the law←Law maker under supervision of Allah
- Umar's (radhiallahu anhu) statements that were made into law
- Umar (radhiallahu anhu) initiated some issues and the prophet (sallallahu aleyhiwasalam) made them into laws

بِالْبَيِّنَاتِ وَالزُّبُرِ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ

وَلَعَلَّهُمْ يَتَفَكَّرُونَ ﴿٤٤﴾

44: Muhsin Khan: With clear signs and Books (We sent the Messengers). **And We have also sent down unto you (O Muhammad SAW) the reminder and the advice (the Quran), that you may explain clearly to men what is sent down to them, and that they may give thought.** [Surah An-Nahl, 16:44]

فَإِنْ أَعْرَضُوا فَمَا أَرْسَلْنَاكَ عَلَيْهِمْ حَفِيظًا إِلَّا أَلْبَسْنَا إِذَا

أَذَقْنَا الْإِنْسَانَ مِنَّا رَحْمَةً فَرَحَ بِهَا وَإِنْ تُصِبْهُمْ سَيِّئَةٌ بِمَا قَدَّمَتْ أَيْدِيهِمْ

فَإِنَّ الْإِنْسَانَ كَفُورٌ ﴿٤٨﴾

48: Muhsin Khan: **But if they turn away (O Muhammad SAW from the Islamic Monotheism, which you have brought to them). We have not sent you (O Muhammad SAW) as a Hafiz (protector) over them (i.e. to take care of their deeds and to recompense them). Your duty is to convey (the Message).** And verily, when We cause man to taste of Mercy from Us, he rejoices thereat, but when some ill befalls them because of the

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

deeds which their hands have sent forth, then verily, man (becomes) ingrate! [Surah As-Shu'ara, 42:48]

إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ  
بِمَا أَرَاكَ اللَّهُ وَلَا تَكُن لِّلْخَائِبِينَ خَصِيمًا ﴿١٠٥﴾

105: Muhsin Khan: **Surely, We have sent down to you (O Muhammad SAW) the Book (this Quran) in truth that you might judge between men by that which Allah has shown you (i.e. has taught you through Divine Inspiration), so be not a pleader for the treacherous.** [Surah An-Nisa, 4:105]

﴿ شَرَعَ لَكُم مِّنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ وَمُوسَى وَعِيسَى أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ  
كَبُرَ عَلَى الْمُشْرِكِينَ مَا تَدْعُوهُمْ إِلَيْهِ اللَّهُ يَجْتَبِي إِلَيْهِ مَن يَشَاءُ وَيَهْدِي  
إِلَيْهِ مَن يُنِيبُ ﴾ ﴿١٣﴾

13: Muhsin Khan: **He (Allah) has ordained for you the same religion (Islam) which He ordained for Nuh (Noah), and that which We have inspired in you (O Muhammad SAW), and that which We ordained for Ibrahim (Abraham), Musa (Moses) and 'Iesa (Jesus) saying you should establish religion (i.e. to do what it orders you to do practically), and make no divisions in it (religion) (i.e. various sects in religion).** Intolerable for the Mushrikun, is that to which you (O Muhammad SAW) call them. Allah chooses for Himself whom He wills, and guides unto Himself who turns to Him in repentance and in obedience. [Surah Ash-Shu'ara, 42:13]

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- **Is a Mufti or a Mujtahid a law maker?**
  - No, if initiating rule
  - Yes, if codifying, elucidating, clarifying law
  - All human beings are subject to error; fallible
  - Blind, uncritical following (Taqlaed) of other humans is haram
  - He or she is not a lawmaker or initiator, rather they are scholarly people informing us of what, to the best of their study and research, is the law that Allah commands us with.

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

أَمْ لَهُمْ شُرَكَاءُ شَرَعُوا لَهُمْ مِنَ الدِّينِ مَا لَمْ يَأْذَنْ بِهِ اللَّهُ وَلَوْلَا  
كَلِمَةُ الْفَصْلِ لَفُضِيَ بَيْنَهُمْ وَإِنَّ الظَّالِمِينَ لَهُمْ عَذَابٌ أَلِيمٌ ﴿٢١﴾

21: Muhsin Khan: **Or have they partners with Allah (false gods), who have instituted for them a religion which Allah has not allowed.** And had it not been for a decisive Word (gone forth already), the matter would have been judged between them. And verily, for the Zalimun (polytheists and wrong-doers), there is a painful torment. [Surah Ash-Shu'ara, 42:21]

- There is no obedience to any created thing if it entails disobedience to the Creator.
- A companion on an expedition told his disobedient followers to jump into the fire. The Prophet (sallallahu aleyhiwasalam) got angry and said if they entered they would never have come out.
- Story of 'Adee ibn Haatim in which he was told that the monks were worshipped when they were accepted as lawmakers.
- "Didn't they make the halal haram and the haram halal and you follow them?"

### **Amazing 'Gems' we derive from this discussion of who is the law maker**

- The Mujtahid who explains Islamic rules and commandments to the general public should explain his proof (and evidence). In our times, many cultural Mad'hab followers have lost this.
- We learn that just because a human says something is part of Islamic Law doesn't mean we have to follow it, unless he or she proves that this is what Allah wants.
- Human intellect and rationale are not law makers; they are essential tools used by the Mujtahid in the process of deducing Islamic Law.

Binder page 14

### **3. Meet Hukm Shar'ee (an Islamic Law)**

Every specific Islamic rule has to come from the Lawmaker, Allah, from the anatomy of Islamic Law. Here we shall discuss what an Islamic rule/law is, (aka. Hukm Shar'ee). [Refer to *Anatomy of an Islamic Rule/Law*]

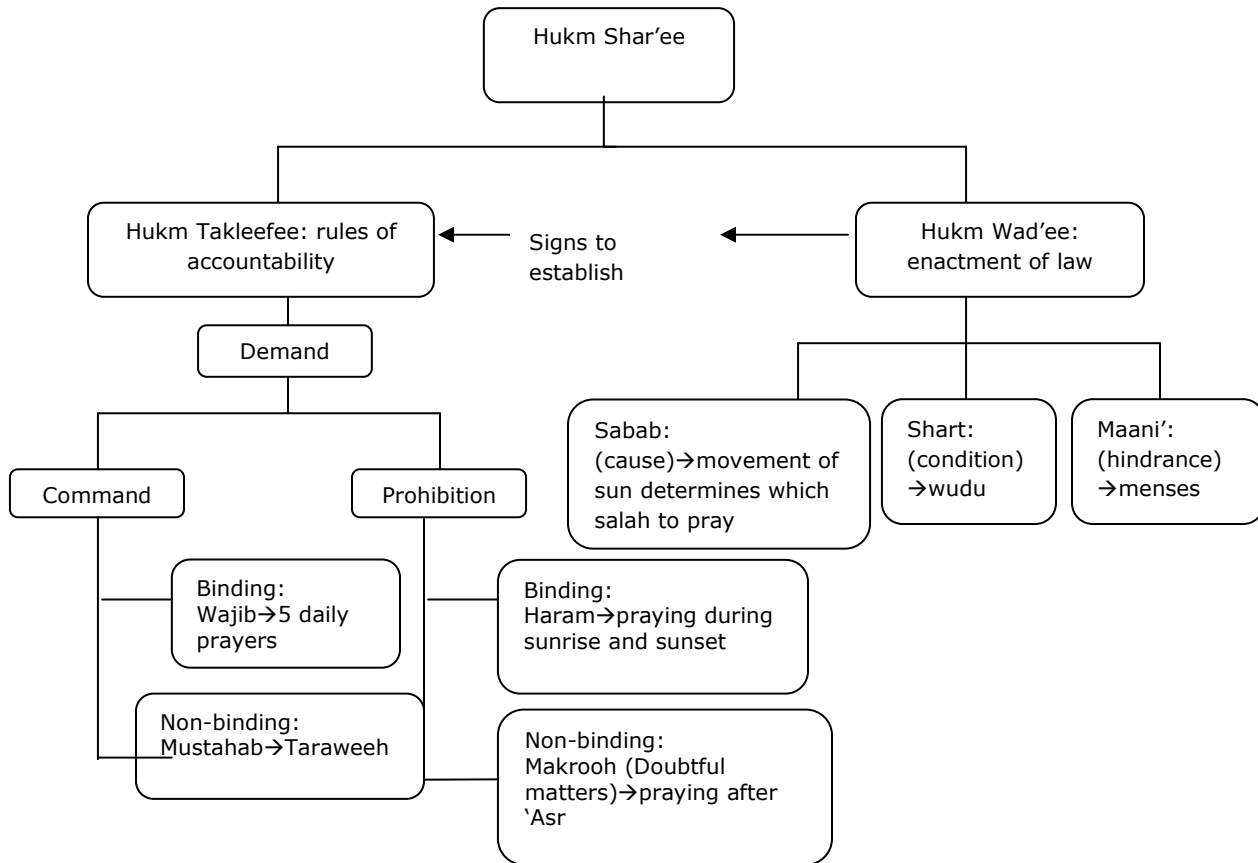
- **Definition of Hukm Shar'ee Far'ee** ← branch (not principle) of main law:



## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

- It is a communication from Allah, addressed to the Mukalaf (accountable person) in regard to his/her actions, constituting a demand or an option (Hukm Takleefee) or enactment (Hukm Wad'ee).
- The product of Usool al Fiqh
- **Hukm Takleefee as a demand**
  - A demand is either a
    - (a) command or a
    - (b) prohibition.
  - That demand is either
    - (c) binding or
    - (d) not binding.
- **Application of a demand**
  - A commanding, binding demand: Fard or Wajib
  - A commanding, non-binding demand: Mustahab or Sunnah
  - A prohibition which is binding: Haram
  - A prohibition which is not binding: Makrooh
- **What about Mubaah? Hukm Takleefee as an option.**
  - In the definition "...or an option...", the servant of Allah is at liberty to do or to avoid doing something. No reward or punishment is involved.
- **Hukm Wad'ee**
  - Enacting something into
    - (a) a cause (Sabab),
    - (b) a condition (Shart) or
    - (c) a hindrance (Maani') to something else.

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)



- **Example: Hukm Takleefee in a rent contract:**

- Wajib: They must pay \$950 per month for the duration of one year.
- Haram: They are commanded in a prohibiting way not to have pets.
- Mubaah: They may sublet if they wish.

# PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

## **CHAPTER TWO: FIRST: AL- HUKM AT-TAKLEEFEE**

Binder page 15

### **1. Al-Wajib, aka. Fard**

- Comes from wajaba: becomes established → falls down on you (befalls you)
- Rewarded for doing, punished for not doing
- **Definition:** It is a commandment that is binding.
- **Other names:** Other names include: Fard, Maktoob, Haqq – all of these terms mean the same thing according to the majority of scholars.
- **Is it called Wajib or Fard? Are they the same?**
  - According to the Hanafis, there is a difference between Fard and Wajib. The majority of scholars say that there is no difference.
  - If a person denies a Fard they are considered to be Kaafir. If a person denies a Wajib, it does not take them out of the fold of Islam.
- **Wajib vs. Fard according to Hanafis**
  - A Fard is something whose proof is in total agreement without any doubt, like Salah and Zakah and Hajj. A Wajib is something whose proof has a difference of opinion from the scholars, like Witr.
  - Imam Abu Hanifa considers Witr as Wajib; you are sinful if you don't do it, but not as sinful as not doing something that is fard.
  - Fard: higher degree of obligation than Wajib, based on source of evidence
  - Wajib: established through sunnah and general/speculative evidence
  - E.g. reciting surah al Fatiha is wajib but other surah is fard
- **Is there some benefit to this distinction?**
  - In the end, the discussion is like those who say forest, while others say trees.

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

### **Two categories of Wajib**

- **Waaajibaat to Allah: devotional acts** (ibaadat)
  - Acts of worship, like salah, zakah, fasting Ramadan, and Hajj
  - Punishments, like the Hudood punishments
  - Punishments that come in the meaning of acts of worship, like the explanation for making false oath, etc.
- **Waaajibaat due to the Creation:** regulations made in Islamic system to serve creation (mu'amalat)
  - The right of Qisas (eye for an eye).
  - Dowry
  - The punishment of 80 lashes for the false accusations of zina.
  - The responsibility to replace the property of others which one has destroyed.
  - Mourning period of death in the family or Iddah for the divorced woman.

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

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### **Amazing 'Gems' we derive from this discussion of what is Fard/Wajib:**

- **No one has the right to cancel and drop the right of Allah.**
  - **Examples:**
    - Mother telling her son not to pray at the upcoming soccer tournament.
    - Teacher telling Muslim student not to go for Jumu'ah because he'll miss important classes, therefore knowledge is more important than prayer
- **Only Allah can cancel His right if He wishes. This can only be done with solid proof from the Quran and Sunnah.**
  - **Examples:**
    - Senior citizen who can't fast can feed a needy person for each day he misses.
    - Someone who missed their fasting in Ramadan for a valid reason can make it up after Ramadan (Qadaa').

### **The Wajib is of different levels. It is not all one level.**

- **Of the highest level:**
  - Eman in Allah and His Messenger (*sallallahu aleyhiwasalam*), Salah (on time), Zakah, Hajj,—the pillars of Islam—kindness to parents.
- **After that...**the Fard comes in different levels
- **Example:** The Prophet (*sallallahu aleyhiwasalam*) said, "*The head issue is Islam, its pillar is Salah, and its pinnacle is Jihad in the path of Allah.*"
- **Even the same Fard action can fluctuate in accordance to how it is performed.**
  - **Example:** To give Sadaqah to a stranger is not as virtuous as giving to a needy family member who is an orphan, a young girl who, if left without this charity, would become very ill.
- **The reward of performing a Fard:**
  - **One must perform with an intention** (not merely out of habit), the reward for which is multiplied ten times→If no intention, no reward.
  - **Salah Munaafiq: Seeks no reward and fears no punishment**
    - However, they don't have to repeat it. If forced, such as zakah when it is forcefully taken from those who do not wish

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

to pay it, even though they didn't have the intention, they don't have to repeat the action.

- **If someone does not perform the Fard, they are sinful. If Allah wishes He may punish them out of His justice.**
  - We say 'may' and not 'for sure' because Allah may forgive them.
  - This is if the person knew what he was doing. If they had no knowledge, there is no sin on them – even until death.
  - However, there is the sin of not learning. If someone is delinquent in learning their Deen, they are sinful for that since studying Islam is Fard.

Binder page 17

### How is Fard recognized?

#### 1. Statements of command

- Imperative Verb(Fi3l Amr): Establish Salah!
  - The present verb that is associated with the Arabic 'lee'

ثُمَّ لِيَقْضُوا تَفَثَهُمْ وَلْيُوفُوا نُذُورَهُمْ وَلْيَطَّوَّفُوا بِالْبَيْتِ الْعَتِيقِ ﴿٢٩﴾

29: Muhsin Khan: Then let them complete the prescribed duties (Manasik of Hajj) for them, and perform their vows, and circumambulate the Ancient House (the Ka'bah at Makkah). [Surah Al Hajj, 22:29]

- A noun derived from the imperative verb

وَالْمُحْصَنَاتُ مِنَ النِّسَاءِ إِلَّا مَا مَلَكَتْ أَيْمَانُكُمْ كَتَبَ اللَّهُ عَلَيْكُمْ  
وَأَجَلَ لَكُمْ مَا وَرَاءَ ذَلِكَ أَنْ تَبْتَغُوا بِأَمْوَالِكُمْ مُحْصِنِينَ غَيْرَ  
مُسْفِحِينَ فَمَا اسْتَمْتَعْتُمْ بِهِ مِنْهُنَّ فَآتُوهُنَّ أُجُورَهُنَّ فَرِيضَةً وَلَا  
جُنَاحَ عَلَيْكُمْ فِيمَا تَرْضَيْتُمْ بِهِ مِنْ بَعْدِ الْفَرِيضَةِ إِنَّ اللَّهَ كَانَ عَلِيمًا

حَكِيمًا ﴿٢٤﴾

24: Muhsin Khan: Also (forbidden are) women already married, except those (captives and slaves) whom your right

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

hands possess. **Thus has Allah ordained for you.** All others are lawful, provided you seek (them in marriage) with Mahr (bridal money given by the husband to his wife at the time of marriage) from your property, desiring chastity, not committing illegal sexual intercourse, so with those of whom you have enjoyed sexual relations, give them their Mahr as prescribed; but if after a Mahr is prescribed, you agree mutually (to give more), there is no sin on you. Surely, Allah is Ever All Knowing, All Wise. [Surah An-Nisa, 4:24]

### 2. Words in the Arabic language that are use for commands that are binding.

- The word Farada: to obligate
  - The Prophet (sallallahu aleyhiwasalam) said, "There are five prayers which Allah has made Fard upon His servants." [Abu Dawood and Bayhaqi]
- The word Kataba: to write/ordain
  -

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا كُتِبَ عَلَيْكُمُ الصِّيَامُ كَمَا كُتِبَ عَلَى الَّذِينَ مِن

قَبْلِكُمْ لَعَلَّكُمْ تَتَّقُونَ ﴿١٨٣﴾

183: Muhsin Khan: O you who believe! Observing As-Saum (the fasting) is **prescribed** for you as it was prescribed for those before you, that you may become Al-Muttaqun (the pious - see V.2:2). [Surah Al-Baqarah, 2:183]

- The word Wajaba: to obligate (mandate)
  - Example: The Prophet (sallallahu aleyhiwasalam) said, "Forgive the Hudood punishments between you. As for those (cases) that reach me requiring a Hudood penalty it becomes **Wajib** (that it be fulfilled)." [Abu Dawood and Nasaa'ee]
- The word Amara: to command (order)

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ

النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا

بَصِيرًا ﴿٥٨﴾

■ 58: Muhsin Khan: Verily! Allah **commands** that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice. Verily, how excellent is the teaching which He (Allah) gives you! Truly, Allah is Ever All Hearer, All Seer. [Surah An-Nisa, 4:58]

- The word *Haqq*: obligation, duty

﴿وَالْمُطَلَّقَاتِ مَتَاعٌ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ ﴿٢٤١﴾﴾

■ 241: Muhsin Khan: And for divorced women, maintenance (should be provided) on reasonable (scale). This is a **duty** on Al-Muttaqun (the pious - see V.2:2). [Surah Al-Baqarah, 2:241]

### 3. A warning of punishment if the command is not performed

- Example: "

﴿وَمَنْ لَّمْ يُؤْمِنْ بِاللَّهِ وَرَسُولِهِ فَإِنَّا أَعْتَدْنَا لِلْكَافِرِينَ

سَعِيرًا ﴿١٣﴾﴾

13: Muhsin Khan: And whosoever does not believe in Allah and His Messenger (Muhammad SAW), then verily, We have prepared for the disbelievers a blazing Fire. [Surah Al-Fath, 48:13]

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## 2. At-Tahreem/Haraam

- **Definition:**

- A prohibition that is binding. The opposite of Wujoob
- Tahreem (prohibition) vs. Wujoob (obligation)
- Haram (prohibited) vs. Wajib (obligated)



## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

- If you stay away from the haram, then for sure you will be rewarded for it.
- **Al-Masjid Al-Haram?**
  - It's called Haram because things are forbidden in it; a sanctuary.
- **Another definition**
  - A word or words which demand the avoidance of doing something addressed from a position of superiority to one who is inferior.
- **Position of superiority?**
  - Because in Du'a we say, "O Allah, do not enter us into Hellfire." It's a prayer, because it's coming from one inferior in position.
- **Other names of Haram**
  - Hadhar, Haraj, Hijr, Ma'siyah, Dhamb, Khatee'ah, Ithm.

### How is Tahreem recognized?

#### **1. Nahee/Prohibition (Do not do...)**

- Statements of prohibition. In Arabic, the most common is the word "la" plus the present verb.
- **Example:**

وَلَا تَقْرَبُوا الزَّيْنَىٰ إِنَّهُ كَانَ فَحِشَةً وَسَاءَ سَبِيلًا ﴿٣٢﴾

*32: Muhsin Khan: And come not near to the unlawful sexual intercourse. Verily, it is a Fahishah [i.e. anything that transgresses its limits (a great sin)], and an evil way (that leads one to Hell unless Allah forgives him). [Surah Al-Isra,17:32]*

- So long as there is no evidence to show that the prohibition is not binding.

#### **2. A warning for those who perform the act**

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### ○ Examples:

- The Prophet (sallallahu aleyhiwasalam) said, "Allah says, 'Against he who takes my Walee (friend) as an enemy I declare war.'"
- Exhibits Allah's anger. The Prophet (sallallahu aleyhiwasalam) said, "The anger of Allah intensifies on those who claim to be the king of all kings. There is no King but He."
- Or the warning can come as a statement of curse: The Prophet (sallallahu aleyhiwasalam) said, "Allah curses those who slaughter to other than He."

### 3. If the action is called kufr or Ma'siyah or Fisq or Khatee'ah or Dhamb or Kabeer'ah

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#### ○ Kufr

- "There are 2 things amongst the people which are kufr: To make false accusations in lineage, and to wail on the dead."

#### ○ Ma'siyah

- The statement of 'Ammar ibn Yaasir (radhiallahu anhu), "Whoever fasts the day of doubt (the 30<sup>th</sup> of Sha'baan) has 'Asa (disobeyed) Abu Al-Qasim."

#### ○ Fisq

- 

وَلَا تَأْكُلُوا مِمَّا لَمْ يُذْكَرِ اسْمُ اللَّهِ عَلَيْهِ وَإِنَّهُ لَفِسْقٌ وَإِنَّ الشَّيْطَانَ  
لَيُوحِيَنَّ إِلَى أَوْلِيَائِهِمْ لِيَجْذِلُواكُمْ وَإِنْ أَطَعْتُمُوهُمْ إِنَّكُمْ لَمُشْرِكُونَ



121: Muhsin Khan: **Eat not (O believers) of that (meat) on which Allah's Name has not been pronounced (at the time of the slaughtering of the animal), for sure it is Fisq (a sin and disobedience of Allah).** And certainly, the Shayatin (devils) do inspire their friends (from mankind) to dispute with you, and if you obey them [by making Al-Maytatah (a dead animal) legal by eating it], then you would indeed be Mushrikun (polytheists) [because

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*they (devils and their friends) made lawful to you to eat that which Allah has made unlawful to eat and you obeyed them by considering it lawful to eat, and by doing so you worshipped them, and to worship others besides Allah is polytheism]. [Surah al-An'aam, 6:121]*

- **Kabeerah**

- "Of the major sins is that a man would curse his parents..."

#### 4. The word Haram and its derivatives

- **Example**

حُرِّمَتْ عَلَيْكُمُ الْمَيْتَةُ وَالدَّمُ وَلَحْمُ الْخِنْزِيرِ وَمَا أُهِلَّ لِغَيْرِ اللَّهِ بِهِ  
وَالْمُنْخَنِقَةُ وَالْمَوْفُوذَةُ وَالْمُتَرَدِّيَةُ وَالنَّطِيحَةُ وَمَا أَكَلَ السَّبُعُ إِلَّا مَا  
ذَكَّيْتُمْ وَمَا ذُبِحَ عَلَى النُّصُبِ وَأَنْ تَسْتَقْسِمُوا بِالْأَزْلَمِ ذَلِكُمْ فِسْقٌ  
الْيَوْمَ يَبْسُ الَّذِينَ كَفَرُوا مِنْ دِينِكُمْ فَلَا تَخْشَوْهُمْ وَاخْشَوْنَ الْيَوْمَ  
أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتِمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيْتُ لَكُمُ الْإِسْلَامَ دِينًا  
فَمَنْ اضْطُرَّ فِي مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِإِثْمٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ ﴿٣﴾

3: Muhsin Khan: **Forbidden to you (for food) are: Al-Maytatah (the dead animals - cattle-beast not slaughtered), blood, the flesh of swine, and the meat of that which has been slaughtered as a sacrifice for others than Allah, or has been slaughtered for idols, etc., or on which Allah's Name has not been mentioned while slaughtering, and that which has been killed by strangling, or by a violent blow, or by a headlong fall, or by the goring of horns - and that which has been (partly) eaten by a wild animal - unless you are able to slaughter it (before its death) and that which is sacrificed (slaughtered) on AnNusub (stone altars).** (Forbidden) also is to use arrows seeking luck or decision, (all) that is Fisqun (disobedience of Allah and sin). This day, those who disbelieved have given up all hope of your

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*religion, so fear them not, but fear Me. This day, I have perfected your religion for you, completed My Favour upon you, and have chosen for you Islam as your religion. But as for him who is forced by severe hunger, with no inclination to sin (such can eat these above-mentioned meats), then surely, Allah is Oft-Forgiving, Most Merciful. [Surah Al-Maidah, 5:3]*

- *"Verily Allah has made Haram on you ill treatment of mothers and the burying of your young daughters alive."*

### 5. The legislation of punishment for the act

- The cutting of the hand for those who steal. → It isn't said directly that stealing is haram, but with this statement above, we can deduce this.

### 6. Comparing an action to another action which is known to be Haram

- *"Whoever plays An-Nard (backgammon), it's as if they've submerged their hands in the blood of swine."* [Muslim]
  - Some say that it is this game.
  - Some of the scholars say that it isn't the game itself, but it is the dice that is haram. So it will mean that any game using dice is haram.
  - Some say that it isn't the dice but it means the games of chance are haram.
  - An-Nard is from the Persian culture

### 7. The notification that action shall notify one's good deeds

- *"Whoever goes to a soothsayer or a fortune-teller and asks them about something, no Salah of theirs will be accepted for 40 nights."* [Muslim]

## The Haram is not all one level

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- Murder ≠ drinking alcohol
- Of the highest level: To associate partners with Allah (shirk)
- After that: The 7 major sins.
- After that: The minor sins.
- Evidence: *The Prophet (sallallahu aleyhiwasalam) was asked, "Which sin is the most major?" He (sallallahu aleyhiwasalam) replied, "To ascribe a partner to Allah even though He (alone) created you." It was asked, "Then what after that?"*

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*He (sallallahu aleyhiwasalam) said, "To fornicate with a neighbor's family member." It was asked, "Then what after that?" He(sallallahu aleyhiwasalam) said, "To murder your child for fear that they will eat with you." [Agreed Upon]*

- Leaving Wajib vs. Doing Haram
- Many said that murder is more dangerous than leaving salah
- Ibn Qayim : Adam (*alaihissalam*) & Iblis event
- Iblis didn't make sujud
- Adam (*alaihissalam*) repented

### Haram: Punishment or Reward

Always Be  
Mindful of your  
**INTENTION!**

- **If someone intentionally desists from performing a haram act, i.e. he or she does not do it hoping for the pleasure of Allah and in accordance to His prohibition, he/she will be rewarded.** →Don't eat pork NOT because you don't like the taste, but because Allah said not to.
- **If someone does not intentionally desist, then he or she will not be rewarded for that.** →If you don't eat pork because you don't like the taste and you don't know that it's haram, you won't get rewarded.
- **The more a person wishes to perform a haram act, the more reward the person gets for not performing it.** →If you avoid haram while living in the West, you get more reward than if you live in Makkah/Madinah.
  - Example: *"There are seven that Allah shall shade under His shade on a day when there will be no shade but His: A youth who grew up in the worship of Allah, a man who was called to commit Zina by a woman of high status and beauty and he said, 'I fear Allah'..." [Agreed Upon]*
- **On the flip side, when the desire to commit haram should be less, the shame of committing the sin is greater.** →Committing zina in Mecca is more sinful than committing zina in the West but BOTH are haram.
  - Example: *"There are three whom Allah shall not speak to on the Day of Resurrection: a senior who committed Zina, a king who lied, and an arrogant dependant." [Muslim]*
- The sin of performing a haram act is not registered as such except for someone who performs it with premeditation. As for someone who performs it out of ignorance, such a person is not blameworthy. →If you do something wrong by mistake, you are not held accountable for it.

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- However, even if the action is done out of ignorance, that does not necessarily cancel the worldly consequences. Nor does it save such a person from punishment if someone in his case should know better.

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### **3. Mustahab (desirable)**

- Ibn Qayyim Al-Jawziya says that avoiding the wajib is worse than committing haram.
- Jumping into making something halal haram is equal to making something haram halal
- Every command is wajib by default, unless mentioned otherwise
- How do you sort out your wajib priorities? The higher obligation takes more priority.

#### **Mustahab (desirable):**

- **Definition:** A commandment that is not binding.
- **Other names:**
  - Sunnah
  - Nafl or Naafilah
  - Fadeelah
  - Ragheebah
  - Tatawwu'
  - Nadb

### **The ruling of Mustahab is recognized by the following:**

1. **The action is encouraged.** → mustahab for individual, wajib for a community
  - *"The best of you is he who learns the Quran and teaches it to others."* → Compete in it.
2. **Mentioning the reward for the action.**
  - *"Whoever builds a Masjid for Allah, Allah shall build a home for them in paradise."* → Not obligated to build a masjid but encouraged to do so.
3. **A commandment that comes with a clue that lowers it from Fard to Mustahab**
  - Rasulullah (sallallahu aleyhiwasalam) said, *"Pray before Maghrib, pray before Maghrib, prayer before Maghrib."* He (sallallahu aleyhiwasalam) then said, *"For whoever*

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wishes.”(after the adhan)→If he (*sallallahu aleyhiwasalam*) didn't add the last part, it would have been wajib.

### 4. **The Prophet's (*sallallahu aleyhiwasalam*) own acts of worship that he performed without additional proof to categorize it as Fard.**

- His (*sallallahu aleyhiwasalam*) custom of fasting Mondays and Thursdays. \*These are the two days when angels shift positions to go and tell Allah about the actions of the people so he wanted to always be in a state of ibaadah.
- Taraweeh→The Prophet (*sallallahu aleyhiwasalam*) would do things but he (*sallallahu aleyhiwasalam*) wouldn't mandate them. Every command is wajib unless there's a clue that suggests otherwise.

### **Levels of Mustahab**

- **Just like we saw that were levels in Haram and Fard, there are also levels of Mustahab.**
  - The Sunnah of Fajr and Witr. The Prophet (*sallallahu aleyhiwasalam*) was keener in performing them than others. He (*sallallahu aleyhiwasalam*) wouldn't miss it whether traveling or in residence.
- **After that, there were Sunnahs that he would do regularly. Sunnah Mu'akkadah** (Emphasized Sunnahs).
  - Other than Witr and 2 Raka'at before Fajr, the Prophet (*sallallahu aleyhiwasalam*) would not perform the other Sunnahs of the Fard Salah when he (*sallallahu aleyhiwasalam*) was traveling.
  - Jum'uah for men, Salatul 'Eid←some 'Ulamaa' say it's blameworthy if you don't do these prayers
- **There are Mustahab acts that happen on occasion.**
  - Tahiyyat Al-Masjid, 2 Rak'ahs after Tawaf, fasting Aashooraa', fasting day of Arafah.
  - Fasting 6 days of Shawwal, praying after an eclipse, Salatul Janaazah
- **Then there are other Mustahab acts that one may do when one feels the strength.**

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- Like finding oneself awake at night, they should go and pray. Note, however, that the most beloved actions to Allah are those that are done consistently and habitually even if they are small.
- Qiyamal Layl (starts after Isha until Fajr) ← The Prophet (*sallallahu aleyhiwasalam*) did this in all parts of the night
- 'Umrah

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### **What if someone never performs the Sunnah Mu'akkadah?**

**The one who never ever performs those emphasized Sunnahs is blameworthy.**

However there is no punishment for leaving the mustahab.

- The Prophet (*sallallahu aleyhiwasalam*) would not do certain things on a regular basis for fear that the Ummah would have to do it. So the fact that he (*sallallahu aleyhiwasalam*) did certain things on a regular basis shows that he (*sallallahu aleyhiwasalam*) wanted us to emulate him (*sallallahu aleyhiwasalam*).
- And when he (*sallallahu aleyhiwasalam*) would do something, he (*sallallahu aleyhiwasalam*) would be consistent in it.
- He (*sallallahu aleyhiwasalam*) said, "*The most beloved actions to Allah are those that are done on a consistent basis, even though they may be small.*"

## **4. Al-Karaahah (Makrooh)**

- **Definition:**

- A prohibition that is not binding, the opposite of Mustahab.
- Will get reward by staying away from it, but won't get punished if you do it.
- Doubtful matters; don't have clear judgment.

- **The use of the term Makrooh:**

- This term is often used by the 'Ulamaa' for those issues which the scholars differed upon. Some would say Haram, others would say permissible. So, the scholars would use the term Makrooh instead of claiming that the issue was positively Haram.



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- Their proof: *"The Halal is clear and the Haram is clear, but between the two are issues which are confusing of which any of the people do not know (the answer to). Thus, whoever protects himself from these confusing issues has protected his Deen...."*
- Imam Ahmad used makrooh to explain haram in classical works "Don't do it."
- E.g. sleeping after fajr, Imam prolonging Isha' prayer

### **How is Makrooh recognized?**

Discouraged but not prohibited

#### **1. If the reward for not doing the action is mentioned, but at the same time there is no mention of the punishment.**

- *"I am the champion of a home in Paradise for those who leave aside argumentation, even though they may be in the right."*

#### **2. A command of prohibition, which comes with a clue to show that it is not binding.**

- The Prophet (*sallallahu aleyhiwasalam*) forbade the people from speaking after Isha. Then on occasion he (*sallallahu aleyhiwasalam*) would speak after Isha. (When he (*sallallahu aleyhiwasalam*) spoke to his wife Safiya during his time in I'tikaaf.)
  - Don't talk after Isha except for three things.
    1. A man with his spouse.
    2. A man with his guests.
    3. For seeking knowledge.

#### **3. The Prophet (*sallallahu aleyhiwasalam*) might leave aside an action purposely, yet there is no proof that it is Haram.**

- *"Verily, I do not eat reclining."* → The 'Ulamaa' say that it is a sign of arrogance.

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### 5. Ibaahah (Mubah)

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- **Definition:**

- Something that is equally permissible to do or not to do. Neutral.
- **Other names**
  - Halal, Hill, Mutlaq, and Jaa'iz.
- **Example:** .

أُحِلَّ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتْنَعًا لَكُمْ وَلِلسَّيَّارَةِ وَحُرِّمَ عَلَيْكُمْ  
صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا وَاتَّقُوا اللَّهَ الَّذِي إِلَيْهِ تُحْشَرُونَ ﴿١١﴾

*“Lawful to you is the pursuit of water-game and its use for food, for the benefit of yourselves and those who travel.”*  
[Surah al –Maidah, 5:96]

- General/Original Permissibility
- Halal vs. Mubah
- Halal are for the items in the Quran and Sunnah that Allah has mentioned in the book.
- Mubah are for the items which Allah stays silent about→not specifically mentioned in the law.
- However, some 'Ulamaa' do not distinguish between halal and mubah

### How is Mubah recognized?

#### 1. With the words, idhantu lakum – laa junaah, or words similar.

- **Example:**

لَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَبْتَغُوا فَضْلًا مِّن رَّبِّكُمْ فَإِذَا أَفَضْتُمْ مِّنْ عَرَفَاتٍ  
فَأَذْكُرُوا اللَّهَ عِندَ الْمَشْعَرِ الْحَرَامِ وَاذْكُرُوهُ كَمَا هَدَيْتُكُمْ وَإِنْ كُنْتُمْ  
مِّن قَبْلِهِ لَمَنِ الضَّالِّينَ ﴿١٨﴾

198: Muhsin Khan: There is **no sin on you** if you seek the Bounty of your Lord (during pilgrimage by trading, etc.). Then when you leave 'Arafat, remember Allah (by glorifying

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*His Praises, i.e. prayers and invocations, etc.) at the Mash'ar-il-Haram. And remember Him (by invoking Allah for all good, etc.) as He has guided you, and verily, you were, before, of those who were astray. [Surah Al-Baqarah, 2:198]*

**2. The actions of the Prophet (*sallallahu aleyhiwasalam*) without any additional evidence to show that it is a desirable or undesirable action.**

- Example: He (*sallallahu aleyhiwasalam*) would sit down and stand.

**3. If the Shari'ah does not speak about an issue, to do it or not to do it.**

- Eating bananas or to sleep on a cotton comforter.

### **AMAZING POINTS OF INTEREST:**

- If the Shari'ah specifically mentions something as permissible, it takes the term of Halal and it is worship to believe that it is permissible.
- If the Shari'ah does not speak about an **issue of worship**, then the **default** is **Haram** until proof is brought that the Shari'ah sanctions it.
- If the Shari'ah does not speak about an **act that is not worship**, then the **default** is **Halal** until proof is brought that the Shari'ah forbids this.

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

### CHAPTER THREE: USOOL PRINCIPLES RELATED TO HUKM AT-TAKLEEFEE

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- product of the consolidation of schools of thought
- under maxims governing Islamic law

#### **Code one: Could something be haram and Fard at the same time?**

##### **a. Could something be Haram and Fard at the same time?**

- Yes
- Example
  - Different Intentions
    - a. Sujood, Fard to be done for Allah. Haram to be done for other than Allah.
  - Different Times
    - a. Eating during the day in Ramadan is Haram. Permissible after Maghrib.
  - Different People
    - a. Praying Maghrib is Fard, Haram for a person in a state of Janaabah to pray.

##### **b. Can it happen with one person, at one time, Haram and Fard?**

- Yes
- Example
  - a. Praying Maghrib on a stolen carpet.
    - i. Some scholars say that there is the Salah itself and the stealing itself. His salah is accepted but he is in sin for having the stolen item.
    - ii. Some say that the salah is invalidated.
  - b. If a woman travels to Hajj without a Mahram, for those that say it's a condition. Even if she is sinful in such a case, it does not nullify her Hajj.

## **PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)**

### **Code Two: If the Haram cannot be abstained from unless something is done, that something becomes Fard?**

- If you dropped Haram meat amongst Halal meat and you were not sure which is which. The only way to not eat the Haram is to abstain from all of that meat. Abstaining from all meat becomes Fard.
- If you have no clean clothes, and prayer time is exiting, what do you do?
- The person has to do the prayer twice. They have to wear one and pray, and then wear the other.

### **Code Three: Credit Fard and Cash Fard**

- **Fard fil Adaa'** (Cash): immediate fard
  - If the conditions of a type of Fard worship are present (like fasting in Ramadan), the human is then required to perform it.
- **Fard fidh-Dhimmah** (Credit): deferred fard
  - However, there may be something that is stopping them from performing that act. They are still required to perform the act, but on credit.
  - Examples
    - A woman in her menses or a sick person during Ramadan must make up the fasts she missed later
    - Someone who falls unconscious all through the time of 'Asr must make it up later

### **Code Four: The Sofa Fard, Bucket-seat Fard, and the Football Field time Fard**

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- **Fard Muwassa'** (Sofa Fard): covert fard
  - In the Sofa Fard, it is a Fard whose time is long enough for the person to perform the Fard and do other things during that time.
  - Salah Dhuhr. Someone may pray it at the beginning of the time, or in the middle, or at the end. If they perform it in the middle, for example, they would have time to perform other Nafl prayers.

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- Someone who delays their Sofa Fard is not sinful, unless they delay it to the point where they know they won't be able to perform it within its time. So if someone needs to take a shower, knowing that it will take 20 minutes to complete, and they delay their Salah until there are only 5 minutes left in the time, such a person would be blameworthy.
- Or someone who delays their Salah until there are only 20 minutes left, and then travels on the highway, knowing they won't get to stop for 45 minutes, such a person would be blameworthy.
- **Fard Mudayyaq** (Bucket Seat Fard): measured fard
  - It is a Fard whose time is long enough only for the person to perform that particular Fard alone.
  - Example
    - Hajj: one can only perform it on specific days, once every year
    - Fasting the day of Ramadan: there is no time to fast something else → can't make up fasts of previous Ramadan in this Ramadan
- **Fard Mutlaq** (Football Field Fard): absolute fard
  - There are other types of worship that are not restricted by time. Instead, they should be performed when the need arises for them: Football Field Fard, or Fard Mutlaq/Wajibat Mutlaqah.
  - Example
    - Kind treatment to parents, visiting relatives, commanding the good, forbidding the evil, what year you want to make Hajj, etc.

### Code Five: Tailored Fard and Untailored Fard

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- **Tailored Fard (Fard Muqaddar)**
  - Obligatory acts which the Shari'ah cut into size; no one can fit these obligatory acts into a different shape.
    - Fajr is 2 Rak'ahs, Zakah on gold and silver is 2.5% etc.
- **Untailored Fard (Fard Ghayr Muqaddar)**
  - Obligatory acts that the Shari'ah did not cut into a specific amount.

## **PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)**

- If the issue of this kind of Fard were to be raised to the Qaadhi, he would estimate an amount based on the situation.
- Question: What if someone misses a Fard of these two, what's the difference?
  - If someone misses a Fard Muqaddar, it becomes due even if the time has passed.
  - If someone misses Fard Ghayr Muqaddar, they are not responsible for making it up after the time has passed. They can only repent.
    - i. Spending on the needy
    - ii. Rescuing a drowning person→saving a person's life is more important than worrying about whether they are the opposite gender or not.
    - iii. Spending on a family member

### **Code Six: Specific Fard and 'Optional' Fard**

- Specific
  - Most of the Fard are specific things we should do.
    - a. One must specifically pray Dhuhr at a specific time.
- Optional
  - Occasionally there are Fard that the person can perform by choosing one of the options.
    - a. The expiation (kaffarah) of a false oath.

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

لَا يُؤَاخِذُكُمُ اللَّهُ بِاللَّغْوِ فِي أَيْمَانِكُمْ وَلَكِنْ يُؤَاخِذُكُمْ  
بِمَا عَقَّدْتُمُ الْأَيْمَانَ فَكَفَّرتُ<sup>ط</sup>هُ إِطْعَامَ عَشْرَةِ مَسْكِينٍ مِنْ أَوْسَطِ  
مَا تَطْعَمُونَ أَهْلِيكُمْ أَوْ كِسْوَتُهُمْ أَوْ تَحْرِيرُ رَقَبَةٍ<sup>ط</sup> فَمَنْ لَمْ يَجِدْ  
فَصِيَامُ ثَلَاثَةِ أَيَّامٍ ذَلِكَ كَفَّرةُ أَيْمَانِكُمْ إِذَا حَلَفْتُمْ<sup>ط</sup> وَاحْفَظُوا  
أَيْمَانَكُمْ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ لَعَلَّكُمْ تَشْكُرُونَ ﴿٨٩﴾

i. 89: **Muhsin Khan:** Allah will not punish you for what is unintentional in your oaths, but He will punish you for your deliberate oaths; for its expiation (a deliberate oath) feed ten Masakin (poor persons), on a scale of the average of that with which you feed your own families; or clothe them; or manumit a slave. But whosoever cannot afford (that), then he should fast for three days. That is the expiation for the oaths when you have sworn. And protect your oaths (i.e. do not swear much). Thus Allah make clear to you His Ayat (proofs, evidences, verses, lessons, signs, revelations, etc.) that you may be grateful. [Surah Al-Maaidah, 5:89]

- b. They must perform one of the three things, but if and only if NONE of the three are possible, THEN they must fast for three days.
- c. The sin is expiated when one performs any one of the three. However, they would be sinful and blameworthy if they did not perform any of the three.



## **PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)**

### **Code Seven: Personal Fard and Community Fard**

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- **Personal Fard (Fard 'Ayn)**
  - Focus is on the individual, not the action
    - a. Salah, fasting, respecting one's parents, telling the truth, having basic knowledge about Islam.
- **Community Fard (Fard Kifaayah)**
  - Focus on the action, not the individual.
    - a. If you do Fard Kifaayah, you get the personal reward for doing it and the reward for the whole community. The sin is removed from the whole community as well. If you don't do it, but it is done, you don't get the reward or the sin.
    - b. Washing the dead body, praying on it, burying it, establishing a place where Quran is taught.
  - Why the name Kifaayah?
    - a. Called this because it is a fard that volunteers from the community come forward until there are enough of them. Kifaayah = enough.
    - b. Includes all the jobs/professions which the Muslim community needs for its well being. E.g.: Doctors, Lawyers, Farmers, Manufacturers, Officers, Soldiers, Muslim Jurists, Office Managers, etc.
    - c. In these cases, the person with the right intention would be rewarded for fulfilling the duty on behalf of the Muslim community
- **APOI**
  - If something like medicine is Fard Kifaayah for the Muslim community, the whole community is blameworthy if there isn't a doctor, until one is established.
    - a. Help and sponsor people so they can study and establish, like for position of imams and so on.
  - A community Fard could become a personal fard in some cases.
    - a. If there are 2 judges that are needed, and there are 2 people that are capable of the position, it becomes fard 'ayn for them.

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

- b. People in Madinah who think studying Islam is Fard Kifayah so they quit←this is wrong because for them it's Fard 'Ayn because they have such a great opportunity that few others will have.

### **Code Eight: What is needed to complete a Fard is also Fard. However if the ruling of Fard does not apply until a certain action is achieved, that action is not Fard.**

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- Paying Zakah is Fard only if you have a threshold on money. If a person does not have that threshold, then it isn't fard for them to get more jobs to get that threshold.
- What is needed to complete a Fard is also Fard (as long as you are capable of doing it)
  - Some Fard actions cannot be complete unless there is another action, before or after it, that is performed. Those before/after actions also take the ruling of Fard in such a case in such a relationship.
    - a. Hajj: You cannot perform it unless you travel to Makkah. Thus, the travel is Fard, even though there is no specific proof for that. However, traveling to Makkah by itself is not Fard.
    - b. Wudhoo': Normally, a Muslim is not required to have Wudhoo'. However, at the time of prayer, it is Fard that they make Wudhoo' because that Fard Salah will not count without the Wudhoo'.
- Exception:
  - If doing that act is not under your control, then it is not Fard.
    - a. The setting of the sun for Maghrib prayer to be fard
- If the ruling of Fard does not apply until something is achieved, that something is not Fard (keyword: ruling)
  - Some actions do not become Fard in the first place unless there is another action before it happens. That before action is not Fard.
    - a. Not fard to reach threshold of Zakah to pay it; you pay it when you've already reached threshold

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### Code Nine: Is one obligated to complete a Mustahab act once they start in it?

Hanafis	Jamhoor (majority of scholars)
Opinion: "It's Haram to break a Mustahab act once you start."	Opinion: "It's permissible to break a Mustahab act if the performer wishes."
Proof: "O ye who believe! Obey Allah and obey your Messenger and make not vain your deeds!"[47:33]	Reply: Ayah is speaking about those who disobey Allah and His Messenger and thus have their deeds nullified.
Aisha and Hafsa <i>radhiallahu wa anhum</i> broke their fast one day for some food they desired. The Prophet <i>sallallahu alaihi wasallam</i> told them to fast another day in its place.	<p>Reply: Hadith means that if they were to fast another day, they would get the reward they seek. It doesn't carry the weight of Fard for them to make it up.</p> <p>Exception: Hajj and 'Umra are exempt from this. If one starts them, they must complete it.</p> <p>وَأَتِمُّوا الْحَجَّ وَالْعُمْرَةَ لِلَّهِ فَإِنْ أُحْصِرْتُمْ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ وَلَا تَخْلِفُوا رُءُوسَكُمْ حَتَّىٰ يَبْلُغَ الْهَدْيُ مَجْلَهُ ۚ فَمَنْ كَانَ مِنْكُمْ مَّرِيضًا أَوْ بِسَاءَ أَدَىٰ مِنْ رَأْسِهِ فَعِدْيَةٌ مِنْ صِيَامٍ أَوْ صَدَقَةٌ أَوْ تِلْكَ فَإِذَا مِنْتُمْ مِمَّنْ تَمَتَّعَ بِالْعُمْرَةِ إِلَى الْحَجِّ فَمَا اسْتَيْسَرَ مِنَ الْهَدْيِ فَمَنْ لَمْ يَجِدْ فَصِيَامٌ ثَلَاثَةِ أَيَّامٍ فِي الْحَجِّ وَسَبْعَةٍ إِذَا رَجَعْتُمْ ۚ تِلْكَ عَشْرَةٌ كَامِلَةٌ ۚ لِمَنْ لَمْ يَكُنْ أَهْلُهُ حَاضِرِي الْمَسْجِدِ الْحَرَامِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ شَدِيدُ الْعِقَابِ ﴿١٩٦﴾</p> <p>196: <b>Muhsin Khan:</b> And perform properly (i.e. all the ceremonies according to the ways of Prophet Muhammad SAW), the Hajj and 'Umrah (i.e. the pilgrimage to Makkah) for Allah. But if you are prevented (from completing them), sacrifice a Hady (animal,</p>

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*i.e. a sheep, a cow, or a camel, etc.) such as you can afford, and do not shave your heads until the Hady reaches the place of sacrifice. And whosoever of you is ill or has an ailment in his scalp (necessitating shaving), he must pay a Fidyah (ransom) of either observing Saum (fasts) (three days) or giving Sadaqah (charity - feeding six poor persons) or offering sacrifice (one sheep). Then if you are in safety and whosoever performs the 'Umrah in the months of Hajj, before (performing) the Hajj, (i.e. Hajj-at-Tamattu' and Al-Qiran), he must slaughter a Hady such as he can afford, but if he cannot afford it, he should observe Saum (fasts) three days during the Hajj and seven days after his return (to his home), making ten days in all. This is for him whose family is not present at Al-Masjid-al-Haram (i.e. non-resident of Makkah). And fear Allah much and know that Allah is Severe in punishment. [Surah Al-Baqarah, 2:196]*

- If you are fasting an optional fast but you want to break it in the day: 2 opinions
  - It's Haraam to break the fast
  - It's permissible to break the fast because it was a mustahab fast, not a fard fast
- If you are praying sunnah and the Iqamah is called for a fard prayer, then you should break the sunnah with a salaam to join the first rak'ah of the fard prayer
- For Hanafis: it's debated whether breaking a mustahab act is haraam or blameworthy (but some consider a blameworthy act equal to haraam)
- For fard fasts you need intention before Fajr but not for optional fasts
- If you break 'umrah, you must slaughter an animal
- If you break Hajj, you must come back next year to do it, if you can afford it

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### Code Ten: Just like there is Fard Kifaayah, there is Mustahab Kifaayah

- Salah At-Taraweeh, giving Salaam, Adhaan, and Iqaamah for the congregational prayers.
- Some consider adhaan fard kifaayah
- Sunnah can be victorious for Islam
  - In history, before a war Muslims used to clean their teeth with miswak. The enemy got scared (thought that Muslims were going to eat them!!) and ran far, far away
- Ibn Taymiyah said that if all the people in the village agree to not perform a Mustahab Kifaayah, then it is a major sin.
- Example:
  - Blameworthy if NO ONE uses miswak before prayer
  - The Prophet *sallallaahu alaihi wasallam* would not attack an enemy village until Fajr. If he heard the Adhan, the mission would be aborted. Otherwise they would attack. This is proof of what Ibn Taymiyyah said because saying the Adhan is Mustahab Kifaayah.

### Code Eleven: Is Mubaah an Islamic Injunction?

- Mubaah is part of Hukm Takleef (rules of accountability) → where is the accountability? In discussion
- Mubaah is of two kinds: accountability is only for the 1<sup>st</sup> type
  - Things that Allah explicitly said were permissible. These are Islamic injunctions from the point of view that one must accept their permissibility. (Halal)

أُحِلَّ لَكُمْ صَيْدُ الْبَحْرِ وَطَعَامُهُ مَتَّعْنَا لَكُمْ فِيهِ وَلِلْسَّيَّارَةِ وَحُرِّمَ عَلَيْكُمْ  
صَيْدُ الْبَرِّ مَا دُمْتُمْ حُرُمًا وَاتَّقُوا اللَّهَ الَّذِي إِلَيْهِ تُحْشَرُونَ ﴿١١﴾

a.

96: **Muhsin Khan:** Lawful to you is (the pursuit of) watergame and its use for food - for the benefit of yourselves and those who travel, but forbidden is (the pursuit of) landgame as long as you are in a state of Ihram (for Hajj or 'Umrah).

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*And fear Allah to Whom you shall be gathered back. [Surah Al-Maaidah, 5:96]*

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَهِيمَةُ  
الْأَنْعَامِ إِلَّا مَا يُتْلَى عَلَيْكُمْ غَيْرِ مُجِلِّي الصَّيْدِ وَأَنْتُمْ حُرْمٌ إِنَّ  
اللَّهَ يَحْكُمُ مَا يُرِيدُ ﴿١﴾

b.

**1: Muhsin Khan:** O you who believe! Fulfill (your) obligations. Lawful to you (for food) are all the beasts of cattle except that which will be announced to you (herein), game (also) being unlawful when you assume Ihram for Hajj or 'Umrah (pilgrimage). Verily, Allah commands that which He wills. [Surah Al-Maaidah, 5:1]

- Things that were not mentioned in the Islamic texts. If it is other than a type of worship, then the default is that it is permissible. This type is not Islamic injunction. (Original/General Permissibility)
  - a. "What Allah made Halal in His book is Halal. And what He made haram in His book is haram. As for what he kept silent about, those things are from His grace, so accept this grace from Allah. Verily, Allah was never to have forgotten anything."

### **Code twelve: A Mubah may be a Fard at its root.**

- Example: Eating bananas. You can eat bananas or oranges or apples or not. However, eating (enough to sustain your body) is Fard. It isn't permissible for someone to go without food until they die.

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### **Code thirteen: Depending on one's intention, a Mubah may become Waajib, Mustahab, Makrooh or Haram.**

- Definition of Ibaadah: All that Allah loves and is pleased with, whether in statements or actions, whether external or internal.

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

- **Examples of Mubah becoming:**
  - Mustahab: Eating food to gain strength for Jihad or 'Ibaadah.
  - Mustahab: Performing a Halal job in order to have no need for Haram money.
  - Fard: If the Fard is not completed unless this Mubaah is performed.
  - Haram: If the Haram will be arrived at by way of this Mubaah action.
    - a. Selling grapes to a winemaker or watering plants when humans are dying of thirst
  - Haram: If one takes on an extra job just so they can afford more lottery tickets.
- If you started a mubaah act with a bad intention (for a non-worship act) but later you change the intention and keep the act.
- There is dispute if it's an act of worship
- Allah created everything in the heavens and earth for you to use.

### **Code Fourteen: The default Ruling in 'Ibaadah is Haram; in other than 'Ibaadah the default is Mubaah.**

- Authentic worship in Islam comes in a defined shape and form. If someone makes something up, it will be rejected.
- The tale of 'Where's your proof?' If you know the issue and the default, you'll know who needs to bring proof
  - 'What's your proof that wearing a fur coat is Halal?' proof not required
  - 'What's your proof that spinning around and reciting Allah Hayy 2500 times is bid'ah?' proof required
- If someone claims that something is haram, something that is just a human thing to do, they have to bring proof.
  - Sitting on chairs during an Islamic class, or eating with spoons
- It goes both ways, some people make Haram what Allah makes halal. E.g.: Extremism in eating of meat products.

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قُلْ هَلْ مَشَهِدَآءُ كُمْ اَلَّذِيْنَ يَشْهَدُوْنَ اَنَّ اِلٰهَ حَرَمَ هٰذَا فَاِنْ شَهِدُوْا فَلَا  
تَشْهَدُوْا مَعَهُمْ وَلَا تَتَّبِعْ اَهْوَاءَ الَّذِيْنَ كَذَّبُوْا بِآيٰتِنَا وَالَّذِيْنَ لَا يُؤْمِنُوْنَ  
بِاٰخِرَةِ وَهُمْ بِرَبِّهِمْ يَعْدِلُوْنَ ﴿١٥٠﴾

- 150: **Muhsin Khan:** Say: "Bring forward your witnesses, who can testify that Allah has forbidden this. Then if they testify, testify not you (O Muhammad SAW) with them. And you should not follow the vain desires of such as treat Our Ayat (proofs, evidences, verses, lessons, signs, revelations, etc.) as falsehoods, and such as believe not in the Hereafter, and they hold others as equal (in worship) with their Lord." [Surah Al-An'aam, 6:150]

## CHAPTER FOUR: SECOND: AL-HUKM AL-WAD'EE/DECLARATORY LAW

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Definition: A communication from the Lawgiver which enacts something into a cause (Sabab), a condition (Shart) or a hindrance (Maani') to something else. Or to connect two things by enacting one of them to be a cause, condition, or hindrance to the realization of the other.

You need evidence to define something as sabab, shart, or maani'

Signs for the 5 pillars

Always constant, (doesn't fluctuate), evident, possible to measure

Note: The different varieties of Hukm Wad'ee are known to be legal rulings (i.e. proof from the lawmaker should be provided to make something sabab, shart, or maani').

### 1. Sabab (cause)

#### a. Definition

- An attribute that is evident and constant (meaning it can be measured), which the Lawgiver has tagged as the indicator to a Hukm in such a way that its presence necessitates the



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presence of the Hukm and its absence means that the Hukm is also absent.

b. This is a necessity for a certain ruling.

### c. Examples

أَقِمِ الصَّلَاةَ لِذُلُوكِ الشَّمْسِ إِلَى غَسَقِ اللَّيْلِ وَقُرْءَانَ الْفَجْرِ إِنَّ قُرْءَانَ

الْفَجْرِ كَانَ مَشْهُودًا ﴿٧٨﴾

- 78: **Muhsin Khan:** Perform AsSalat (Iqamat-as-Salat) from mid-day till the darkness of the night (i.e. the Zuhr, 'Asr, Maghrib, and 'Isha' prayers), and recite the Quran in the early dawn (i.e. the morning prayer). Verily, the recitation of the Quran in the early dawn is ever witnessed (attended by the angels in charge of mankind of the day and the night). [Surah Al-Israa', 17:78]
- Murder is sabab for the death penalty→however it can also be a hindrance: if there is doubt, you can't have punishment
- Theft is a sabab for punishment
- Fulfillment of the marriage contract is a sabab for the obligation to provide the dowry and financially support his wife. Even if a man stipulates otherwise, it is still binding upon him.
- d. Sabab from Allah:
  - Death of a family member is sabab for you to get inheritance
  - Sunset (not adhan) is sabab for breaking fast
- e. Your actions can be a sabab for an action.
  - Talking while praying meaning that you have to redo your prayer.
  - Eating something during the days of Ramadan -> this means that you have to make up that day.
  - Sighting the moon is Sabab for initiating the month of Ramadan

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## 2. Shart (Condition)

### a. Definition

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- An evident and constant attribute whose absence necessitates the absence of the Hukm, but whose presence does not automatically bring about its object (mashroot).

### 1. Example:

- a. Presence of a valid marriage is a precondition (Shart) for divorce. But it does not mean that when there is a valid marriage, it must lead to divorce.
- b. Presence of Wudhoo': It is a condition (Shart) of Salah. However, just because someone has wudhoo' does not necessitate Salah.

### b. Types of Shart

- Logical Shart
  - 1. Life is a condition for someone to be obligated to learn.
- Linguistic Shart
  - 1. "If you come home on time, I'll give you a cookie."
- Shari'ah
  - 1. Wudhoo' is a condition for Salah.

### c. The difference between Shart and Rukn (pillar)

- In both cases the action cannot take place without it. But in Shart, the condition is separate from the action (wudhoo). In Rukn, it is within the action (sajdah).
- Intention of salah can be either shart or rukn
- Note: It is possible for a person to make a Shart (condition) binding on themselves. Like someone who says in their marriage contract, "I shall not travel out of the country." If he does, that could invalidate the contract.
- d. Sabab for Fajr is dawn, but you still can't pray without the shart of wudhoo or facing qiblah
- e. Lack of shart = lack of hukm
- f. Sabab for zakah is possessing the minimum amount (nisb), the shart is having that amount for one year
- g. Can downgrade intention, but can't equalize or upgrade it! → intention from fard to nafl, but not nafl to fard, or fard to fard

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## 3. Maani' (Hindrance)

### a. Definition

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

- An act or an attribute whose presence either nullifies the Hukm or the cause (Sabab) of the Hukm. In either case, the result is the same, namely that the presence of the Maani' means the absence of the Hukm.
- **Example**
  1. A child steals a crayon from the teacher. Because (a) he is not Mukallaf and that (b) the crayon is below the threshold for stolen property and that (c) the crayon wasn't safeguarded, all three facts are Maani' (hindrance) to the ruling of Hudood punishment.

### b. Loop Holes?

- It should be noted that a Muslim should not purposely intend to apply a Maani' to run a loophole on Allah's law.
- **Example**
  1. A person should not purposely spend a few bucks below the Zakah threshold before the end of the year to intentionally avoid paying the Zakah.
  2. A person should not intentionally smoke themselves with foul smells, or eat garlic so that attending the masjid becomes undesirable in their case.

## **A Maani' has the power to nullify/veto a Hukm or a Sabab**

- **One: When a Maani' vetoes a Hukm**
  1. The presence of this type of nullifier directly nullifies the verdict (Hukm), even if the cause (Sabab) and the condition (Shart) are both present.
- 2. Example**
  - a. A father murders his son. Should the father receive capital punishment?
    - i. **Hukm**
      1. Someone who kills should be killed in punishment for the crime.
    - ii. **Sabab**
      1. Murder: in this case it took place.
    - iii. **Condition**

## PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)

1. It must be done with premeditation.  
This was present.

### iv. Maani' (nullifier)

1. A father is not to be killed in retaliation for murdering his son (based on the hadith).

### v. Note

1. The father may be severely punished with other punishments, but it should not reach capital punishment because of this Maani'.

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### o Two: When a Maani' vetoes a Sabab.

1. A Maani' can veto and nullify a Sabab (cause) in the sense that its presence makes a cause (Sabab) null and void.

### 2. Case: A nephew murders his rich uncle to get \$\$

- a. **Sabab** (cause) for inheritance: That a person must be one of the sanctioned inheritors as dictated in the Qur'an.
- b. **MAANI'** (nullifier): A murderer does not inherit from the one he murdered.
- c. **Verdict**: Thus when the cause (Sabab) is nullified, the Hukm itself is nullified. He's not going to jail with a full bank account; he gets NOTHING.

### 3. Case: Someone has a lot of gold.

- a. **Sabab** for Zakah: It must pass the threshold and must be in his possession for one year.
- b. **MAANI'**: He has debts
- c. **Verdict**: Thus, if he has enough money for Zakah but he owes people the majority of what he has, he does not have to pay Zakah on that gold.
- d. However, if you lend money, you must include that when you calculate your zakah

## CHAPTER FIVE: TAKLEEF (ACCOUNTABILITY)

Comes from the word كلف meaning "burden"

### 1. Mahkoom Feeh, Mahkoom 'Alayh

#### a. Definition

- i. Literally: To place a burden on someone that includes a degree of hardship.
- ii. E.g.: As a term: It is an order—whether a command to do or a forbiddance from doing—with conditions that apply to either the one commanded or the action that is being requested. As follows:

#### b. Conditions that apply to the action, not the person commanded: Mahkoom Feeh

- i. It must be known that this is a commandment/prohibition from Allah.
- ii. It must be possible for the action to be performed/abstained from.

لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا أُكْتَسَبَتْ رَبَّنَا لَا  
تُؤَاخِذْنَا إِنْ نَسِينَا أَوْ أَخْطَأْنَا رَبَّنَا وَلَا تَحْمِلْ عَلَيْنَا إِصْرًا كَمَا حَمَلْتَهُ  
عَلَى الَّذِينَ مِنْ قَبْلِنَا رَبَّنَا وَلَا تُحَمِّلْنَا مَا لَا طَاقَةَ لَنَا بِهِ ط وَاعْفُ عَنَّا وَاعْفِرْ  
لَنَا وَارْحَمْنَا أَنْتَ مَوْلَانَا فَانصُرْنَا عَلَى الْقَوْمِ الْكَافِرِينَ ﴿٢٨١﴾

1.

286: **Muhsin Khan:** Allah burdens not a person beyond his scope. He gets reward for that (good) which he has earned, and he is punished for that (evil) which he has earned. "Our Lord! Punish us not if we forget or fall into error, our Lord! Lay not on us a burden like that which You did lay on those before us (Jews and Christians); our Lord! Put not on us a burden greater than we have strength to bear. Pardon us and grant us Forgiveness. Have mercy on us. You are our Maula (Patron, Suppor-ter and Protector, etc.) and give us victory over the disbelieving people. [Surah Al-Baqarah,

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2:286]: the action that Allah commanded you with IS in your abilities, b/c Allah knows your capabilities and doesn't burden you with more than you can bear

### c. Conditions that apply to the person, not the action: Mahkoom 'Alayh

- i. He must be of sane mind. Hadith: *"The pen was raised from three people: The sleeping one until he awakes, the child until he reaches puberty, and the insane one until his faculties return to him."* → if an insane person leads your salah, your prayer is invalid
- ii. He cannot be sleeping or be in a state of forgetfulness. However, unlike the insane person, a sleeping or forgetful person has to make up what they missed during their sleep/forgetfulness. And if they damage anything in such a state, they are held liable. Absence of accountability does NOT mean absence of liability.
  1. They would have to pay the person whatever they broke in their sleep.
  2. Need to pay someone back even if they forgot about the debt.
  3. Are you accountable for waking someone up when they're supposed to pray? Issue of dispute
- iii. Cannot be in a state of intoxication.
- iv. He/she must have reached the age of puberty. → before puberty only good deeds are counted
- v. Cannot be under a state of compulsion.
  1. Free will, conscious, action is nullified if forced
  2. You can't force someone to pray fajr, but you can wake them up to pray with you.
  3. Lesser compulsion (no immediate harm) is not a legit excuse.

## 2. What do you mean compulsion (ikraah)?

### a. Definition

- i. To force someone to do something using the element of fear.

### b. Two types of Ikraah

- i. One: Lesser Compulsion

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1. It is a compulsion that does not lead to death, nor to that person losing limb of their body.
2. Ruling:
  - a. In such a case, the person cannot be considered under compulsion.

### **ii. Two: Major compulsion**

1. It is compulsion where the person fears for his/her life or harm inflicted on a limb of the body or one's wealth.
2. Ruling:
  - a. In such a case, the person carries the same ruling as the one who is not obligated to perform the action.
3. "I will kill you if you don't... (do something that doesn't harm anyone but maybe yourself)...eat bacon." You have the choice to eat it or not.
4. "I will kill you if you don't... (do something that harms someone else)...rape her." You MUST NOT do it.
5. "I will kill her if you don't... (do something that doesn't harm anyone but maybe yourself)...eat bacon." You MUST eat it. ←Cannot inflict harm on others even if you will die for it.
6. You cannot commit a crime to stop another crime from happening.

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### **c. Signs of puberty**

- i. There are three signs of puberty that males and females have in common:
  1. Nocturnal emissions (wet dreams)
  2. Growth of coarse hair around the private parts.
  3. Reaching the age of fifteen. (only if none of the other signs appears)
- ii. In the case of females there is a fourth sign:
  1. Menstruation

## **3. Are non-Muslims adults Mukallaf>**

### **a. Opinion one: NO**

- i. Proof:

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1. There is no meaning to the branches of Islam being compulsory upon them because if they do it, it will not be accepted.
2. If they become Muslim, they do not have to perform all the Salah and Fasting etc. that they missed.
- ii. No rules of Islam apply to them, however you can advise but not obligate
- iii. If they live in an Islamic land, they must follow the law of the land

### b. Opinion two: YES

- i. It isn't illogical to say they are responsible for the branches of Islam. They are responsible for the branches and responsible for the key to the acceptance of those branches, which is the Shahadah.
- ii. Proof

فِيهِ آيَاتٌ بَيِّنَاتٌ مَّقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا وَلِلَّهِ عَلَى النَّاسِ حُجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلًا وَمَنْ كَفَرَ فَإِنَّ اللَّهَ غَنِيٌّ عَنِ الْعَالَمِينَ



1.  
97: **Muhsin Khan:** In it are manifest signs (for example), the Maqam (place) of Ibrahim (Abraham); whosoever enters it, he attains security. And Hajj (pilgrimage to Makkah) to the House (Ka'bah) is a duty that mankind owes to Allah, those who can afford the expenses (for one's conveyance, provision and residence); and whoever disbelieves [i.e. denies Hajj (pilgrimage to Makkah), then he is a disbeliever of Allah], then Allah stands not in need of any of the 'Alamin (mankind and jinns). [Surah Ali Imraan, 3:97]

عَنِ الْمُجْرِمِينَ

2.



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41: **Muhsin Khan:** *About Al-Mujrimun (polytheists, criminals, disbelievers, etc.), (And they will say to them):*

مَا سَلَكَكُمْ فِي سَقَرٍ ﴿٤١﴾

42: **Muhsin Khan:** *"What has caused you to enter Hell?"*

قَالُوا لَمْ نَكُ مِنَ الْمُصَلِّينَ ﴿٤٢﴾

43: **Muhsin Khan:** *They will say: "We were not of those who used to offer their Salat (prayers)*

وَلَمْ نَكُ نَطْعِمُ الْمِسْكِينَ ﴿٤٣﴾

44: **Muhsin Khan:** *"Nor we used to feed Al-Miskin (the poor);*

وَكُنَّا نَخُوضُ مَعَ الْخَافِضِينَ ﴿٤٤﴾

45: **Muhsin Khan:** *"And we used to talk falsehood (all that which Allah hated) with vain talkers.*

وَكُنَّا نَكْذِبُ يَوْمَ الدِّينِ ﴿٤٥﴾

46: **Muhsin Khan:** *"And we used to belie the Day of Recompense*

حَتَّىٰ أَتَانَا الْيَقِينُ ﴿٤٦﴾

47: **Muhsin Khan:** *"Until there came to us (the death) that is certain." [Surah Al-Muddathir, 74:41-47]*

### c. Benefit of this issue

- i. If they die in a state of kufr, not only will they be punished for their rejection of Islam, but also for all the branches that they were negligent of. If they become Muslim, it doesn't mean they don't have to make it all up because they don't have to make up what they weren't commanded in the first place. It just means that Allah forgave them.

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### d. What is the ruling of "Ahlul Fatra": Non-Muslims who never received an appropriate invitation to Islam?

- i. No access to Islam/ Muslims and died worshipping other than Allah?
  1. In the rules of this dunya, we don't consider them Muslims.
  2. Rules of akhirah, we can't say. This will be up to Allah.
- ii. What if they receive partial invitation to Islam (Fox news)
  1. Depends on if they have access to the real knowledge → if not, they are considered Ahlul-Fatra

### e. Terms related to a Mukallaf

- i. Adaa': To perform something on time.
- ii. Ee'aadah: To repeat something in its legal time because of some deficiency or that the action became invalid.
  1. You started your salah, sneezed, and said Alhamdulillah, so you start over
  2. You prayed not knowing where the Qiblah is but later found out, you must repeat
- iii. Qadaa': To perform something out of its legal time.
- iv. Saheeh: To describe a valid act incurred by the Mukallaf. → followed all the conditions and done correctly
- v. Faasid and Baatil: To describe an irregular and void (respectively) act incurred by the Mukallaf. → majority don't distinguish between them
  1. Faasid: directed to one of the attributes
  2. Baatil: Directed to essence → you pray correctly but realize you didn't wash your feet

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**Something to think about...** (Refer p. 37) Should you calculate all the salah you missed (for many years)?

Imam Ahmed: for someone who intentionally misses it for no reason, it's an act of kufr

Kafir in faith or action? Majority opinion: act of kufr but is still considered a Muslim

- Minority opinion: If you ask for forgiveness (make serious tawbah) you don't have to make it up
- Majority opinion: you must estimate how many salah you missed and try to make it up daily

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- Some say if you asked for forgiveness, you are not obliged to make up for it.
- The 1<sup>st</sup> thing you will be asked of on the Day of Judgment is salah

### **4. Rukhsah (Concession) vs. Azeemah (Strict resolute, default ruling in shar'iah)**

#### **a. Definition**

##### **i. Literally**

1. Facilitation and ease. They say Rakhsah As-Si'r, if it becomes cheaper and easier to buy that commodity.

##### **ii. As a term**

1. (Concessionary Law – Allowance) A law that is modified due to the presence of extenuating factors.

b. Comes from Arabic word meaning getting easier, cheaper→getting discount on Islamic rulings

c. Can't make rukhsah for yourself—only from Shar'iah

d. Example

##### **i. Azeemah**

1. Salah needs to be prayed on time with all the rakahs prayed.

##### **ii. Rukhsah**

1. If a person travels, then it is allowed to shorten and combine.

##### **2. Tayyammum**

a. Situations – Suppose you have water available BUT you are sick and the water would increase your sickness OR the only water available is being sold for abnormal prices.

b. Verdict – To do tayyammum in one of these two cases would be a Rukhsah.

c. What if you didn't have water altogether?

- i. It wouldn't be considered a Rukhsah. It would be considered 'Azeemah (Strict resolute); i.e. you have to do tayammum

##### **iii. Which is better to use?**

1. Depends on the situation and it is up to the person.
2. Not fasting in Ramadan when traveling with the intention that you are enjoying the rukhsah is better than fasting and complaining about it→ you get more reward

##### **iv. Default is azeemah unless there is a rukhsah**

## **PART TWO: AL-HUKM SHAR'EE (THE ISLAMIC RULE)**

# Part Three: The Sources of Islamic Law

## Chapter 1: Identifying the sources of Shari'ah

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### 1. What are the Sources of Islamic Law?

- **Definition:** Principal proofs of the Shari'ah and Islamic law in which an *indication* is found to help deduce a practical rule (Hukm).

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي  
الْأَمْرِ مِنْكُمْ فَإِنْ تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ  
كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا ﴿٥٩﴾

59: **Muhsin Khan:** O you who believe! Obey Allah and obey the Messenger (Muhammad SAW), and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger (SAW), if you believe in Allah and in the Last Day. That is better and more suitable for final determination. [Surah An-Nisaa, 4:59]

- The indications are found within the text (Dalalatul Al-Fadh). This is what a Mujtahid searches for.
- Those in charge of affairs are classified as:
  - Al-Umara – Political leaders
  - Al-'Ulama – Religious leaders, such as muftis and imams
  - The best way to reconcile between them is through cooperation based on the Sunnah, an example of which was when the Prophet *sal'Allaahu 'alayhi wasallam* allied with the Ansar for political support under his religious leadership
  - If a person is qualified, however, he can be both an 'Alim and an Ameer
- **Sources about which there is unanimous agreement**
  - Qur'an and Sunnah
- **Sources which there is general agreement** (Jumhoor)

## Part Three: The Sources of Islamic Law

- Ijmaa' (Consensus) and Qiyas (Analogical reasoning).
- **Sources about which there is general disagreement**
  - Statement of the Sahaba
  - Urf (Custom)
  - Istihsaan (Juristic Preference)
  - Maslaha Mursala (Consideration of Public Welfare)
  - Istishaab (Presumption of Continuity)
  - Sadd Al-Dharaa'i (Blocking the Means)
  - Shar'u Man Qablanaa (Laws revealed prior to the advent to Islam)

### **Adillah Shar'iiyyah**

- The sources of law are also called Adillah Shar'iiyyah (Legal Evidences or Proofs)
  - Usually discussed when someone asks for dalil (singular of Adillah).
- It is important to mention that all the sources of Islamic Law obtain their authority from the Qur'an as the main source of law.

### **2. Dividing Adillah Shar'iiyyah**

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- *Concerning their source:*
  - **Adillah Naqliyyah** (Transmitted proofs):
    - Transmitted proof with a strong chain of trustworthy narrators. No rational justification is required in its favor.
    - For Example: The Qur'an, Sunnah, Ijmaa' and statements of the sahaba
      - Zakah does not need to be rationalized, since it is in the Qur'an, but we can rationalize to explain the wisdom behind it.
  - **Adillah Aqliyyah** (Rational Proofs):
    - A proof which was founded through reason and requires rational justification.
    - For example, Qiyas, Istishaab, & Sadd Al-Dharaa'i
      - When discussing drug use, we can rationalize its haram nature since it isn't explicitly said in the Qur'an and Sunnah. We can compare it to alcohol which is haram according to Surah Al-Maaidah.

## Part Three: The Sources of Islamic Law

- We are given a right to demand justification for a Hukm that was derived through rationale
- *Concerning their authority:*
  - **Adillah Mustaqillah** (Independent Proof):
    - A proof that is classified as an independent evidence *Asl* is a proof of its own right.
    - Solely the Qur'an, Sunnah & Ijmaa' (Ijmaa' should be in this category according to the majority of the scholars)
  - **Adillah Muqayyadah** (Dependent Proofs):
    - A proof that is classified as dependent evidence is to say that its authority is derived from one of the three independent proofs.
    - Qiyas (Analogy)
      - Drugs are haraam, because of their likeness to alcohol (which is prohibited in the Qur'an)
- *Concerning the power they contain:*
  - **Qaati'** (Definitive):
    - It indicates clear injunctions of the proof in respect to its transmission and meaning. Like the Qur'an.
    - Example: "Establish Salah"
  - **Dhanni'** (Speculative):
    - It indicates speculative clearance of the proof in its transmission or meaning, or both.
    - An example of a speculative transmission is of a solitary report (or hadith Ahaad). Such a hadith could have had any number of narrators or reporters, but every chain of transmission has the same person in it. That single person could be in any generation, whether the sahaba's or the tabi'een's.
      - Side note: If every chain has one of two people, it is considered "hadith 'Aziz".
      - If every chain contained one of three to nine people, it is called "Hadith Mashhoor".
      - If every chain has one of ten or more people, is considered "Hadith Mutawattir" and is considered impossible to have been fabricated.
      - The Qur'an was transmitted in a Mutawattir manner.

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- An example of a speculative meaning is the word Qur' in the Qur'an (Surah Al-Baqarah, 2:228) in respect to the waiting period of a divorcee, it can be interpreted as blood or purity.
- The Qur'an, in some cases can be considered dhanni with respect to its meaning, but is always Qaati' with respect to its transmission, and therefore its authority can never be undermined

### **Chapter 2: Sources about which there is Unanimous Agreement: The Qur'an**

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#### ▪ **Definition:**

- The speech of Allah revealed to the Prophet in Arabic (thereby excluding the Bible, Torah, the translation of the Qur'an, etc) over the course of his Prophethood to prove his prophecy.
  - It is inimitable (miraculous in every sense of the word), its recitation considered an act of worship. It was transmitted to us by continuous testimony (Tawaatur).
  - It is preserved in writing in the order of the Mus'haaf, which starts with Surah Al-Fatiha & ends with Surah An-Naas.

#### • **Qur'an vs. Hadith Qudsi:**

- Hadith Qudsi (sacred hadith) is another form of the speech of the Messenger of Allah *sal'Allaahu 'alayhi wasallam* in which he narrates a concept directly from Allah. It is not a Qur'an and therefore its authenticity is subject to scrutiny just like any other hadith.
  - On the authority of Abu Hurayrah *radi'Allaahu 'anhu* who said that the Messenger of Allah *sal'Allaahu 'alayhi wasallam* said, "Allah (glorified and exalted be he) said "I am so self-sufficient that I am in no need of having an associate. Thus, he who does an action for someone else's sake as well as Mine will have that action renounced by Me to him whom he associated with Me"." [Muslim]

### **Authority of the Qur'an**

1. It is the actual speech of the Creator, and therefore is free from errors and human deficiency.



## Part Three: The Sources of Islamic Law

a.

وَإِنْ أَحَدٌ مِّنَ الْمُشْرِكِينَ اسْتَجَارَكَ فَأَجِرْهُ حَتَّى يَسْمَعَ كَلِمَ اللَّهِ ثُمَّ  
أَبْلِغْهُ مَأْمَنَهُ ذَٰلِكَ بِأَنَّهُمْ قَوْمٌ لَا يَعْلَمُونَ ﴿٦﴾

6: **Muhsin Khan:** And if anyone of the Mushrikun (polytheists, idolaters, pagans, disbelievers in the Oneness of Allah) seeks your protection then grant him protection, so that he may hear the Word of Allah (the Quran), and then escort him to where he can be secure, that is because they are men who know not. [Surah At-Tawbah, 9:6]

2. The Lord guaranteed the preservation of the Qur'an, and therefore it remains in its original form since the stage of revelation.

إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ ﴿٩﴾

a.

9: **Muhsin Khan:** Verily We: It is We Who have sent down the Dhikr (i.e. the Quran) and surely, We will guard it (from corruption) [Surah Al-Hijr, 15:9]

- i. The word "Dhikr" in this ayah is translated as remembrance the majority of the time. The more correct translation is the Qur'an for this situation.

3. The Qur'an with no doubt was transmitted to us in a continuous testimony (Tawaatur) which makes it Qaati' (definitive) in its constancy and leaves no room for speculation about its authenticity.

4. The Qur'an was revealed to rule by and judge according to its ruling.

إِنَّا أَنْزَلْنَاهُ إِلَيْكَ بِالْحَقِّ لَتَحْكُمَ بَيْنَ النَّاسِ  
بِمَا أَرَادَكَ اللَّهُ وَلَا تَكُن لِّلْخَائِنِينَ خَصِيمًا ﴿١٠٥﴾

a.

105: **Muhsin Khan:** Surely, We have sent down to you (O Muhammad SAW) the Book (this Quran) in truth that you might judge between men by that which Allah has shown you (i.e. has taught you through

## Part Three: The Sources of Islamic Law

Divine Inspiration), so be not a pleader for the treacherous. [Surah An-Nisaa', 4:105]

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ  
بِالْأَنْفِ وَالْأُذْنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَن تَصَدَّقَ  
بِهِ فَهُوَ كَفَّارَةٌ لَهُ وَمَن لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَئِكَ هُمُ  
الظَّالِمُونَ ﴿٤٥﴾

b.

45: **Muhsin Khan:** And We ordained therein for them: "Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal." But if anyone remits the retaliation by way of charity, it shall be for him an expiation. **And whosoever does not judge by that which Allah has revealed, such are the Zalimun (polytheists and wrongdoers - of a lesser degree).** [Surah Al-Maidah, 5:45]

## Language of the Qur'an

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- What is the language of the Qur'an?
  - The Qur'an explicitly states that all of it is communicated in pure Arabic.
  - PROOF:

وَلَقَدْ نَعْلَمُ أَنَّهُمْ يَقُولُونَ إِنَّمَا يُعَلِّمُهُ بَشَرٌ لِّلسَّانِ الَّذِي يُلْحِدُونَ إِلَيْهِ  
أَعْجَمِيٍّ وَهَذَا لِسَانٌ عَرَبِيٌّ مُّبِينٌ ﴿١٠٣﴾

103: **Muhsin Khan:** And indeed We know that they (polytheists and pagans) say: "It is only a human being who teaches him (Muhammad SAW)." The tongue of the man they refer to is foreign, while this (the Quran) is a clear Arabic tongue. [Surah An-Nahl, 16:103]

## Part Three: The Sources of Islamic Law

- The Qur'an has some foreign words in it like Ibrahim, but the Qur'an did not use any word until it was in the language already.
- *What is the dialect of the Qur'an?*
  - The Arabic spoken in the Qur'an is the language of Quraysh, the tribe of the Messenger of Allah.
  - PROOF:

وَمَا أَرْسَلْنَا مِنْ رَّسُولٍ إِلَّا بِلِسَانِ قَوْمِهِ لِيُبَيِّنَ لَهُمْ فَيُضِلَّ اللَّهُ مَنْ يَشَاءُ  
وَيَهْدِيَ مَنْ يَشَاءُ وَهُوَ الْعَزِيزُ الْحَكِيمُ ﴿٤﴾

**4: Muhsin Khan:** *And We sent not a Messenger except with the language of his people, in order that he might make (the Message) clear for them. Then Allah misleads whom He wills and guides whom He wills. And He is the All-Mighty, the All-Wise*[Surah Ibrahim, 14:4]

- The Qur'an came down in different dialects, but Uthman *radhiallahu anhu* only preserved just the one dialect.
- *What is the Harf (dialect) in respect to the Qur'an?*
  - It is one of the seven instances of variant readings in different Arabic dialects. Words in different dialects were often read with different vowelling or declensions that affected the grammatical position and sometimes also the meaning of the text.
  - PROOF: *On the authority of Ubayy Ibn Kaa'b, the Messenger of Allah sal'Allaahu 'alayhi wasallam said: "The Qur'an was revealed in seven 'Harfs' dialects."* [Ahmad and Tirmidhi]
  - EXAMPLE: The word "aydiyahuma" (their hands) in *Surat Ma'idah* [5:38] on the punishment of theft. Ibn Mas'ood read the word to be "aymanahuma" (their right hands).
- *What is the authority of the Harf (dialect)?*
  - Hanafis
    - It is speculative evidence in the interpretation of the Qur'an.
  - Malakis and Shafi'ees
    - It is rejected altogether.

## Part Three: The Sources of Islamic Law

- *What is Qiraa'ah "a recitation" in respect to the Qur'an?*
  - It is an accent in the Arabic language found in one particular Harf in which the Qur'an is pronounced based on the manners of speech the different Arab tribes had spoken.
  - There are seven different recitations for the Quraysh Harf such as Hafs on the authority of 'Aasim and Warsh on the authority of Naafi.
  - For example, the word 'yafsil' in *Surah Mumtahinah* [60:3] is read by:
    - Hafs as "yafsilu" making the meaning "He will judge between you"
    - Warsh as "yufsilu" making the meaning "it will be judged between you"
- *What is the authority of different Qiraa'aat 'recitation'?*
  - Qiraa'aat are considered an authentic Qur'an if they meet three conditions of validity:
    - The Qiraa'ah should have an authentic chain of narration in which the chain of narrators was continuous (Mutawaatir).
    - The variations in Qiraa'aat should match known Arabic grammatical constructions.
    - The Qiraa'ah should coincide with the script of one of the copies of the Qur'an distributed during the era of the third caliph 'Uthman *radhiallahu anhu*.
- *Translations*
  - The meaning of the Qur'an found in languages other than Arabic is called 'translations'. A translation doesn't have the legal authority of the Qur'an.
  - According to Ibn Taymiyyah, there are three types of translations:
    - Word for word, keeping the original order of the words. [Most scholars say this is impossible and therefore impermissible]
    - Explanation of the meaning
    - Explanation of the meaning and examples to prove its truthfulness.
  - According to Ibn Uthameen *rahimallahu anhu*, the explanation of the meaning (Tarjum Al-Ma'naweeyah) is permissible, especially for da'wah purposes, but cannot replace an actual Qur'an. The person translating must:
    - Include the Arabic within the translation
    - Be a trustworthy Muslim in terms of character and religious behavior
    - Understand Arabic and the language they are translating the Qur'an into
    - Know the language of the Shari'ah to understand what the Qur'an is referring to in certain passages

## Part Three: The Sources of Islamic Law

- Tafsir (commentary) is a form of interpretation that is subject to debate, all based on the sources utilized to reach a particular commentary for a particular text.

### Ayaat Al-Ahkam (Legal Verses)

Binder page 42

- What are they?
  - An ayah is classified as one of the legal verses if it contains a Hukm (ruling), even if this occurs in a non-legal context.

يَا أَيُّهَا النَّبِيُّ إِذَا طَلَّقْتُمُ النِّسَاءَ فَطَلِّقُوهُنَّ لِعَدَّتِهِنَّ وَأَحْصُوا  
الْعِدَّةَ وَاتَّقُوا اللَّهَ رَبَّكُمْ لَا تَخْرِجُوهُنَّ مِنْ بُيُوتِهِنَّ وَلَا يَخْرُجْنَ إِلَّا  
أَنْ يَأْتِيَنَّ بِفَحِشَةٍ مُبَيِّنَةٍ وَتِلْكَ حُدُودُ اللَّهِ وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ  
فَقَدْ ظَلَمَ نَفْسَهُ لَا تَدْرِي لَعَلَّ اللَّهَ يُحْدِثُ بَعْدَ ذَلِكَ أَمْرًا



1: **Muhsin Khan:** O Prophet (SAW)! When you divorce women, divorce them at their 'Iddah (prescribed periods), and count (accurately) their 'Iddah (periods). And fear Allah your Lord (O Muslims), and turn them not out of their (husband's) homes, nor shall they (themselves) leave, except in case they are guilty of some open illegal sexual intercourse. And those are the set limits of Allah. And whosoever transgresses the set limits of Allah, then indeed he has wronged himself. You (the one who divorces his wife) know not, it may be that Allah will afterward bring some new thing to pass (i.e. to return her back to you if that was the first or second divorce). [Surah Talaq, 65:1]

## Part Three: The Sources of Islamic Law

وَإِذْ جَعَلْنَا الْبَيْتَ مَثَابَةً لِّلنَّاسِ وَأَمْنَا وَاتَّخِذُوا مِن مَّقَامِ إِبْرَاهِيمَ مُصَلًّٰٓط  
وَعَهْدُنَا إِلَىٰ إِبْرَاهِيمَ وَإِسْمَاعِيلَ أَن طَهِّرَا بَيْتِيَ لِلطَّائِفِينَ وَالْقَائِمِينَ  
وَالرُّكَّعِ السُّجُودِ ﴿١٢٥﴾

125: **Muhsin Khan:** And (remember) when We made the House (the Ka'bah at Makkah) a place of resort for mankind and a place of safety. And take you (people) the Maqam (place) of Ibrahim (Abraham) [or the stone on which Ibrahim (Abraham) stood while he was building the Ka'bah] as a place of prayer (for some of your prayers, e.g. two Rak'at after the Tawaf of the Ka'bah at Makkah), and We commanded Ibrahim (Abraham) and Isma'il (Ishmael) that they should purify My House (the Ka'bah at Makkah) for those who are circumambulating it, or staying (I'tikaf), or bowing or prostrating themselves (there, in prayer). [Surah al-Baqarah, 2:125]

- This gives a legal hukm to take Ibrahim's station as a place of prayer even though the verdict was within a story (a non-legal context).

- *Total number of Legal Verses?*

According to Imam Abu Bakr Mohammad Al-Arabi Al-Maliki (534 H.) they are identified to be over eight hundred, whether they occur in a legal or non-legal context.

### Types of Ayaat Al-Ahkam

- First
  - Ahkam I'tiqaadiyyah: those which relate to belief.

## Part Three: The Sources of Islamic Law

وَقَدْ نَزَّلَ عَلَيْكُمْ فِي الْكِتَابِ أَنْ إِذَا سَمِعْتُمْ آيَاتِ اللَّهِ يُكْفَرُ بِهَا وَيُسْتَهْزَأُ بِهَا فَلَا تَقْعُدُوا مَعَهُمْ حَتَّى يَخُوضُوا فِي حَدِيثٍ غَيْرِهِ إِنَّكُمْ إِذَا مِثْلُهُمْ إِنَّ اللَّهَ جَامِعُ الْمُنَافِقِينَ وَالْكَافِرِينَ فِي جَهَنَّمَ جَمِيعًا



140: **Muhsin Khan:** And it has already been revealed to you in the Book (this Quran) that when you hear the Verses of Allah being denied and mocked at, then sit not with them, until they engage in a talk other than that; (but if you stayed with them) certainly in that case you would be like them. Surely, Allah will collect the hypocrites and disbelievers all together in Hell, [Surah An-Nisa, 4:140]

- Second

- Ahkaam Akhlaaqiyyah: those which relate to morality.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَسْخَرُ قَوْمٌ مِّنْ قَوْمٍ عَسَىٰ أَن يَكُونُوا خَيْرًا مِّنْهُمْ وَلَا نِسَاءٌ مِّنْ نِّسَاءٍ عَسَىٰ أَن يَكُنَّ خَيْرًا مِّنْهُنَّ وَلَا تَلْمِزُوا أَنْفُسَكُمْ وَلَا تَنَابَزُوا بِالْأَلْقَابِ بِئْسَ الْأَسْمُ الْفُسُوقُ بَعْدَ الْإِيمَانِ وَمَن لَّمْ يَتُبْ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ

هُمُ الظَّالِمُونَ

11: **Muhsin Khan:** O you who believe! Let not a group scoff at another group, it may be that the latter are better than the former; nor let (some) women scoff at other women, it may be that the latter are better than the former, nor defame one another, nor insult one another by nicknames. How bad is it, to insult one's brother after having Faith [i.e. to call your Muslim brother (a faithful believer) as: "O sinner", or "O wicked", etc.].

## Part Three: The Sources of Islamic Law

*And whosoever does not repent, then such are indeed Zalimun (wrong-doers, etc.). [Surah al-Hujuraat, 49:11]*

- Third

- Ahkaam Amaliyyah: those related to practical legal rulings.
- Types

Can check these out through Google to find items from the Qur'an.

- **Ibadaat (Devotional Acts):** Those pertaining to ritual acts in dealing with the Creator such as salah.
  - "And establish salah" [Surah Al-Baqarah, 2:43]
- **Mu'amalaat (Non-Devotional Acts):** Those pertaining to dealing with other (the creation) such as sales.
  - "And Allah has permitted trade and forbidden usury" [Surah Al-Baqarah, 2:275]
- Al-Ahkam Al- Amaliyyah both in Ibadaat and Mu'amalaat can be identified as the *corpus juris* of the Qur'an i.e. the body of the practical law in the Qur'an

## Makki & Madani

**Binder page 43**

- Definition
  - The Qur'an revealed in the two distinct periods of the Prophet's *sal'Allaahu 'alayhi wasallam* mission in Makkah and Madinah.
- *What is its importance to the legislative process?*
  - It gives an insight into the context and circumstances in which the ayaat were revealed.
  - It gives an understanding to the incident of Naskh (abrogation).
  - It facilitates a better understanding of the characteristic features of the Quranic legislation.
- *Differences between them:*
  - According to different opinions, Surahs (or even ayat) are classified into 'Makki and Madani according to the place they were revealed, the time at which they were revealed, or the people to whom the ayat were being addressed ("O you who Believe" being Madani and "O Mankind" being Makki). For the purpose of this class, we will go according to the time at which they were revealed.



## Part Three: The Sources of Islamic Law

- Makki
  - The part of the Qur'an which was revealed prior to the Prophet's *sal'Allaahu 'alayhi wasallam* migration to Madinah, regardless of the locality in which it was received.
- Madani
  - The part of the Qur'an which was revealed after the Prophet's *sal'Allaahu 'alayhi wasallam* migration to Madinah, regardless of the locality in which it was received.
- *General Content*
  - Makki
    - Basic principles of law and guidelines of religion.
    - Most of the rules were of the Aamm (general) and later on were qualified.

قُلْ لِلَّذِينَ ءَامَنُوا يَغْفِرُوا لِلَّذِينَ لَا يَرْجُونَ أَيَّامَ

اللَّهِ لِيَجْزِيَ قَوْمًا بِمَا كَانُوا يَكْسِبُونَ ﴿١٤﴾

- - 14: **Muhsin Khan:** Say (O Muhammad SAW) to the believers to forgive those who (harm them and) hope not for the Days of Allah (i.e. His Recompense), that He may recompense people according to what they have earned (i.e. to punish these disbelievers, who harm the believers). [Surah al-Jaathiya, 45:14]
  - The style of these verses are more forceful, fitting those who rejected Allah's book entirely, and with shorter ayat
  - There is nothing about Jihad or hypocrisy in these ayat (neither occurred until after the migration)
- Madani
  - Elaboration on the Makki part of the Qur'an and supplementing its basic guidelines.
  - It is comprised of legal rules and regulates the various aspects of life.

## Part Three: The Sources of Islamic Law

أُذِنَ لِلَّذِينَ يُقَاتِلُونَ بِأَنَّهُمْ ظَلِمُوا وَإِنَّ اللَّهَ عَلَىٰ نَصْرِهِمْ لَقَدِيرٌ ﴿٣٩﴾

- 39: **Muhsin Khan:** Permission to fight is given to those (i.e. believers against disbelievers), who are fighting them, (and) because they (believers) have been wronged, and surely, Allah is Able to give them (believers) [Surah Hajj, 22:39]
- The verses are more gentle in style fitting the Muslims who had already believed
- The distinction between Makki and Madani parts of the Qur'an is based on the information that is provided mainly by the companions and the following generation. The Prophet *sal'Allahu 'alayhi wasallam* himself never said anything on the subject.

### Characteristics of Quranic Legislation

Binder page 44

#### 1. Brevity and Details (Al-Ijmalu Wattafseel)

a. What is the largest part of the Qur'an?

- i. The larger part of the Qur'an consists of general principles, and in certain areas, the Qur'an provides specific details. It is all comprehensive in that context.

1.

وَمَا مِنْ دَابَّةٍ فِي الْأَرْضِ وَلَا طَائِرٍ يَطِيرُ بِجَنَاحَيْهِ إِلَّا أُمَمٌ أَمْثَالُكُمْ مَا

فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ ثُمَّ إِلَىٰ رَبِّهِمْ يُحْشَرُونَ ﴿٣٨﴾

38: **Muhsin Khan:** There is not a moving (living) creature on earth, nor a bird that flies with its two wings, but are communities like you. We have neglected nothing in the Book, then unto their Lord they (all) shall be gathered. [Surah al-An'aam, 6:38]

## Part Three: The Sources of Islamic Law

هُوَ الَّذِي خَلَقَ لَكُمْ مَّا فِي الْأَرْضِ جَمِيعًا ثُمَّ اسْتَوَىٰ إِلَى السَّمَاءِ  
فَسَوَّاهُنَّ سَبْعَ سَمَوَاتٍ وَهُوَ بِكُلِّ شَيْءٍ عَلِيمٌ ﴿٢٩﴾

2.

29: **Muhsin Khan:** He it is Who created for you all that is on earth. Then He Istawa (rose over) towards the heaven and made them seven heavens and He is the All-Knower of everything. [Surah al-Baqarah, 2:29]

b. How was the brevity of the Qur'an detailed?

- i. Most of the brevity of the Qur'an is explained and elaborated by the Sunnah which shows the importance of the Sunnah as we cannot follow many of the laws of the Qur'an without it.
- ii. .

بِالْبَيِّنَاتِ وَالزُّبُرِ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ  
وَلَعَلَّهُمْ يَتَفَكَّرُونَ ﴿٤٤﴾

44: **Muhsin Khan:** With clear signs and Books (We sent the Messengers). And We have also sent down unto you (O Muhammad SAW) the reminder and the advice (the Quran), that you may explain clearly to men what is sent down to them, and that they may give thought. [Surah an-Nahl, 16:44]

- iii. The order of zakat is given in the Qur'an, but the details on how to fulfill this commandment are provided by the sunnah.

c. What areas of the Qur'an are detailed?

- i. The Qur'an is specific and detailed on matters that are deemed unchangeable i.e. devotional matters ('Ibadaat).

## Part Three: The Sources of Islamic Law

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلَّذِ كَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ فَإِنْ كُنَّ نِسَاءً  
فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ  
لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ  
لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوَاهُ فَلِلْمِثْلِ ثُلُثٌ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِلْأُمِّهِ  
السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ  
أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِنَ اللَّهِ إِنْ أَلَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾

1. **11: Muhsin Khan:** Allah commands you as regards your children's (inheritance); to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit, **(these fixed shares) are ordained by Allah.** And Allah is Ever AllKnower, AllWise. [Surah an-Nisaa', 4:11]
2. Inheritance, bequeathing and accepting, are both considered devotional acts because Allah told us we must inherit.
3. The Qur'an is very detailed when it comes to money (because, as Sheikh Yaser said, we would eat each other alive if definite laws were not set down), when it comes to divorce and fasting (among others).

## Part Three: The Sources of Islamic Law

d. What areas of the Qur'an are briefed?

- i. In matters that are liable to change i.e. civil transactions (Mu'aamalaat) the Qur'an is briefed and merely lays down general guidelines.

1. .

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ  
مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ  
وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ  
إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ ﴿٢٧٥﴾

275: **Muhsin Khan:** Those who eat Riba (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaitan (Satan) leading him to insanity. That is because they say: "Trading is only like Riba (usury)," whereas **Allah has permitted trading and forbidden Riba (usury)**. So whosoever receives an admonition from his Lord and stops eating Riba (usury) shall not be punished for the past; his case is for Allah (to judge); but whoever returns [to Riba (usury)], such are the dwellers of the Fire - they will abide therein [Surah al-Baqarah, 2:275]

2. This is from the mercy of Allah to keep certain things brief. This way it will help in keeping things flexible.

ii. Note

1. The Qur'an warns against the regulation of everything by the express terms of divine revelation, as this is likely to lead to rigidity and cumbersome restrictions.
2. A ruling of the Qur'an may be conveyed in a text which is unequivocal and clear (Qaati'), and that is a definitive text. Or in a language that is opened to different interpretations (Dhanni, speculative).

## Part Three: The Sources of Islamic Law

3. .

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَسْأَلُوا عَنْ أَشْيَاءَ إِن تُبَدَ لَكُمْ تَسْأَلُكُمْ وَإِن  
تَسْأَلُوا عَنْهَا حِينَ يُنَزَّلَ الْقُرْءَانُ تُبَدَ لَكُمْ عَفَا ٱللَّهُ عَنْهَا ٱللَّهُ غَفُورٌ

حَلِيمٌ

**101: Muhsin Khan:** *O you who believe! Ask not about things which, if made plain to you, may cause you trouble. But if you ask about them while the Quran is being revealed, they will be made plain to you. Allah has forgiven that, and Allah is Oft-Forgiving, Most Forbearing. [Surah al-Maidah, 5:101]*

- a. This ayah is only for during the time of the Prophet *sal'Allaahu 'alayhi wasallam* when the ayahs are coming down. Not for today where we have to make sure what is haram and halal.
- b. The sahaba loved when travelers came to Madinah because they were "allowed" to ask the Prophet *sal'Allaahu 'alayhi wasallam* questions.
- c. This cannot be taken to stay ignorant. We need to make sure that the actions we do are within the bounds of Islam.

## Part Three: The Sources of Islamic Law

### 1. Gradation of Revelation (Tanjeem)

Binder page 45

a. What is the gradation of revelation?

- i. The Qur'an was revealed piecemeal over a period of twenty-three years in relation to particular events.

1. .

وَقَالَ الَّذِينَ كَفَرُوا لَوْلَا نُزِّلَ عَلَيْهِ الْقُرْآنُ جُمْلَةً وَاحِدَةً  
كَذَلِكَ لِنُثَبِّتَ بِهِ فُؤَادَكَ وَرَتَّلْنَاهُ تَرْتِيلًا

32: **Muhsin Khan:** And those who disbelieve say: "Why is not the Quran revealed to him all at once?" Thus (it is sent down in parts), that We may strengthen your heart thereby. And We have revealed it to you gradually, in stages. (It was revealed to the Prophet SAW in 23 years.). [Surah al-Furqan, 25:32]

b. Why gradually?

- i. To give the believers an opportunity to reflect and memorize.
- ii. To facilitate continuous contact with the Divine.
  1. Whenever the Prophet *sal'Allaahu 'alayhi wasallam* received a revelation, he would perspire because of the weight of the message.
- iii. To give the believers enough time to spread the word and follow the injunctions.
- iv. To allow for a progression in legislation until it reached perfection

c. How was the revelation gradual?

- i. Considering the events that were experienced throughout the years of the revelation.
- ii. In response to a question the Prophet *sal'Allaahu 'alayhi wasallam* was asked.
- iii. Observing the rule of abrogation (Naskh).

d. Examples for the rule of abrogation:

## Part Three: The Sources of Islamic Law

i.

وَمِنْ ثَمَرَاتِ النَّخِيلِ وَالْأَعْنَابِ تَتَّخِذُونَ مِنْهُ سَكَرًا وَرِزْقًا حَسَنًا إِنَّ فِي  
ذَلِكَ لَآيَةً لِّقَوْمٍ يَعْقِلُونَ ﴿٦٧﴾

67: **Muhsin Khan:** And from the fruits of date-palms and grapes, you derive strong drink (this was before the order of the prohibition of the alcoholic drinks) and a goodly provision. Verily, therein is indeed a sign for people who have wisdom. [Surah An-Nahl, 16:67]

ii.

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعٌ لِلنَّاسِ  
وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا وَيَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلِ الْعَفْوَ كَذَلِكَ  
يُبَيِّنُ اللَّهُ لَكُمُ الْآيَاتِ لَعَلَّكُمْ تَتَفَكَّرُونَ ﴿٢١٩﴾

219: **Muhsin Khan:** They ask you (O Muhammad SAW) concerning alcoholic drink and gambling. Say: "In them is a great sin, and (some) benefit for men, but the sin of them is greater than their benefit." And they ask you what they ought to spend. Say: "That which is beyond your needs." Thus Allah makes clear to you His Laws in order that you may give thought." [Surah al-Baqarah, 2:219]



## Part Three: The Sources of Islamic Law

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَقْرَبُوا الصَّلَاةَ وَأَنْتُمْ سُكَرَىٰ حَتَّىٰ تَعْلَمُوا مَا  
تَقُولُونَ وَلَا جُنُبًا إِلَّا عَابِرِي سَبِيلٍ حَتَّىٰ تَغْتَسِلُوا وَإِنْ كُنْتُمْ مَرْضَىٰ أَوْ  
عَلَىٰ سَفَرٍ أَوْ جَاءَ أَحَدٌ مِّنْكُمْ مِنَ الْغَايَةِ أَوْ لَمْ تَجِدُوا مَاءً فَتَيَمَّمُوا  
صَعِيدًا طَيِّبًا فَامْسَحُوا بِوُجُوْهِكُمْ وَأَيْدِيكُمْ إِنَّ اللَّهَ كَانَ  
عَفُوًّا غَفُورًا ﴿٤٣﴾

iii.

43: **Muhsin Khan:** O you who believe! Approach not AsSalat (the prayer) when you are in a drunken state until you know (the meaning) of what you utter, nor when you are in a state of Janaba, (i.e. in a state of sexual impurity and have not yet taken a bath) except when travelling on the road (without enough water, or just passing through a mosque), till you wash your whole body. And if you are ill, or on a journey, or one of you comes after answering the call of nature, or you have been in contact with women (by sexual relations) and you find no water, perform Tayammum with clean earth and rub therewith your faces and hands (Tayammum). Truly, Allah is Ever Oft-Pardoning, Oft-Forgiving. [Surah an-Nisaa', 4:43]

iv. .

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ  
عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ ﴿٩٠﴾

90: **Muhsin Khan:** O you who believe! Intoxicants (all kinds of alcoholic drinks), gambling, AlAnsab, and AlAzlam (arrows for seeking luck or decision) are an abomination of Shaitan's (Satan) handiwork. So avoid (strictly all) that (abomination) in order that you may be successful. [Surah al-Maaidah, 5:90]

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One of the wisdoms behind this is to show the mercy of Allah. Aisha *radi'Allaahu 'anha* said that if only the first and then the fourth verse had been revealed, no one would have embraced Islam.

### 2. Asbab an-Nuzool

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*a. Definition:*

- i. The phenomenology of the Qur'an which explains the events that are related to the revelation of particular Ayaat.

*b. Why is it important?*

- i. Knowledge of words and concepts of an Ayah is incomplete without knowledge of the context.
- ii. Understanding the wisdom behind the legislation of a particular law.

*c. What is the source of Asbab An-Nuzool?*

- i. A reliable report related to us by a Sahabi who has been present at the time of the occasion.

*d. General text vs. Particular occasion*

- i. From a legislative perspective, what is considered in regard to a general text which was revealed for a particular reason, is it the generality of the text or the particularity of the occasion?
  1. The marriage of the Prophet *sal'Allaahu 'alayhi wasallam* to the ex-wife of his adopted son. By this marriage, Allah showed that one can marry one's adopted son's ex-wife.
  2. When Allah revealed the ayat for when the Prophet *sal'Allaahu 'alayhi wasallam* frowned towards the blind man.
- ii. Majority of jurists rule by the generality of the text unless another clue is provided to suggest otherwise.
- iii. Example
  1. The ruling of Dhihaar was made general even though the legal text revealed was for a particular occasion between Khawla bint Tha'laba and her husband Aws bin As-Saamit.

قَدْ سَمِعَ اللَّهُ قَوْلَ الَّتِي تُجَادِلُكَ فِي زَوْجِهَا وَتَشْتَكِي إِلَى اللَّهِ وَاللَّهُ  
يَسْمَعُ تَحَاوُرَ كُفَّيْنِ إِنَّ اللَّهَ سَمِيعٌ بَصِيرٌ ﴿١﴾

*a.*

**1: Muhsin Khan:** Indeed Allah has heard the

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*statement of her (Khaulah bint Tha'labah) that disputes with you (O Muhammad SAW) concerning her husband (Aus bin AsSamit), and complains to Allah. And Allah hears the argument between you both. Verily, Allah is All-Hearer, All-Seer. [Surah al-Mujaadilah, 58:1]*

- b. The Prophet *sal'Allaahu 'alayhi wasallam* refused her case based on the presumption of continuity, assuming that what the law had been before was still the law.
  - c. We must assume that the ruling does not only pertain to her. Other verses which were revealed in reference to specific incidents are also to be taken as general rulings unless otherwise specified in the Qur'an or Sunnah
- a. *Other examples of Asbab An-Nuzool are:*
- i. Surah Lahab (111), revealed when Abu Lahab mocked Muhammad *sal'Allaahu 'alayhi wasallam*
  - ii. Surah 'Abasa (81), the beginning of which was revealed when Muhammad *sal'Allaahu 'alayhi wasallam* turned away from a blind man because he was busy

### 3. Ratiocination in the Qur'an (Ta'leel)

- a. *Definition*
- i. It is the rationale of an injunction, the purpose and the objective of the law. It is the search for the effective cause of legislation for a particular given law.
  - ii. A cause (Sabab) is called Illah. Illah is also used to identify the wisdom (hikmah) or the benefit accrued with a particular law or for the higher objective of a ruling.
- b. *How Illah is identified?*
- i. The Qur'an sometimes justifies the ruling with reference to Illah and the benefits accrued with it.

1.

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ صَلَاتَكَ

سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ ﴿١٠٣﴾

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103: **Muhsin Khan:** Take Sadaqah (alms) from their wealth in order to purify them and sanctify them with it, and invoke Allah for them. Verily! Your invocations are a source of security for them, and Allah is All-Hearer, All-Knower. [Surah at-Tawbah, 9:103]

- ii. Jurists have identified the Illah through reasoning & Ijtihad
- 1. .

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ

عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ ﴿٩٠﴾

90: **Muhsin Khan:** O you who believe! Intoxicants (all kinds of alcoholic drinks), gambling, AlAnsab, and Al-Azlam (arrows for seeking luck or decision) are an abomination of Shaitan's (Satan) handiwork. So avoid (strictly all) that (abomination) in order that you may be successful. [Surah al-Maaidah, 5:90]

- a. The process of inference conducted by jurists concluded that intoxication is the main Illah for the prohibition of wine.
- iii. One hukm can have more than one Illah depending on how the scholars take it.
- iv. If the hikmah is not clear, only one hikmah becomes recognizable: it is a test from Allah
- v. The 'Ulama are not obligated to find the wisdom behind the rulings, but they may do so in order to establish the higher objective of the law.
- vi. The authority of the Qur'an as the principal source of Shari'ah is absolutely independent of ratiocination.
- vii. The explanation of the Illah in the Qur'an in most occasions is designed to make the Qur'an easier to understand.

### **Chapter Three: Sources about which there is Unanimous Agreement: The Sunnah**

## Part Three: The Sources of Islamic Law

The Sunnah has many technical definitions according to the different uses of the terminology used by the fuqahaa', muhaditheen, theologians, and usooles (Scholars of Jurisprudence)

- Arabic Language
  1. The way of life, or tradition
- Fuqahaa'
  1. Mustahab
- Muhaditheen
  1. The life of the Prophet *sal'Allaahu 'alayhi wasallam* , including his habits, appearance and attributes, even before Islam, as well as his examples, statements, and his approvals and disapprovals.
- Theologians ('Ulama)
  1. Sunnah vs. Bid'ah (the straight path to Allah in belief and practices)
- Usoolees
  1. The Prophet's *sal'Allaahu 'alayhi wasallam* examples, statements, and his approvals and disapprovals.

### 1. Definition

- a. All that is narrated from the Prophet *sal'Allaahu 'alayhi wasallam* , his acts, his sayings and whatever he has tacitly approved.

### 2. As a source of law

- a. *"I left two things among you. You shall not go astray so long as you hold on to them: the Book of Allah & my Sunnah."*

### 3. An act, Sunnah Fi'liyyah (actual)

- a. Aisha narrates, *"The Messenger of Allah used to eat with his right hand and drink with his right hand."*

### 4. A saying, Sunnah Qawliyyah (verbal)

- a. Omar narrates, *"Deeds are judged by their intentions..."*

### 5. A tacit approval, Sunnah Taqreeiyyah

- a. Anas narrates, *"Handshaking was a common practice amongst the Companions of the Messenger of Allah."*

### 6. Sunnah vs. Hadith

- a. Hadith is a narration of the conduct of the Prophet *sal'Allaahu 'alayhi wasallam*.
- b. Sunnah is the example and the law that is deduced from the conduct itself (the actual ruling that is derived from the hadith)

## Part Three: The Sources of Islamic Law

*The definition used in this study is that of the Usoolees which serves the concept of legislation.*

### Hujjiyyah of the Sunnah (The Proof Value)

#### 1. Definition

- a. Hujjiyah is the proof value of the Sunnah as a source of law into the legal theory.
- b. The conduct of the Messenger of Allah *sal'Allaahu 'alayhi wasallam* was meant to establish a rule of Shari'ah and constitute a binding ruling.

#### 2. The Qur'an

- a. .

مَا آفَاءَ اللَّهِ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ﴿٥٧﴾

**7: Muhsin Khan:** What Allah gave as booty (Fai') to His Messenger (Muhammad SAW) from the people of the townships, - it is for Allah, His Messenger (Muhammad SAW), the kindred (of Messenger Muhammad SAW), the orphans, AlMasakin (the poor), and the wayfarer, in order that it may not become a fortune used by the rich among you. **And whatsoever the Messenger (Muhammad SAW) gives you, take it, and whatsoever he forbids you, abstain (from it) , and fear Allah. Verily, Allah is Severe in punishment.** [Surah al-Hashr, 59:7]

#### 3. The Sunnah

- a. "Indeed I was given this Qur'an and something similar to it (Sunnah)."

#### 4. Practice of the Sahaba

- a. It was reported that the first Muslim Caliphs have issued instructions to their deputies and judges around the state in which they asked them to follow the Sunnah of the Prophet *sal'Allaahu 'alayhi wasallam* whenever they could not find the answer in the Qur'an.

#### 5. Ijmaa'

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- a. Muslim jurists are unanimous on the fact that Sunnah is a source of Shari'ah, and that it stands on the same footing as the Qur'an.
- If there is an apparent contradiction between the Qur'an and Sunnah, we need to look at the historical background. Also we need to check if somehow it is abrogated. If we can't tell from historical areas, then both are dropped and other means are looked at. This is going to be covered in Usool II.
- Therefore, those who say they follow the Qur'an but reject the Sunnah (Qur'aneeyoon) aren't actually following the Qur'an in the first place.
- The Hujjiyah (proof value) of the Sunnah becomes binding once the authenticity of that particular text of the Sunnah is determined i.e. Sahih or Hassan and Mutawattir (continuous reports) or Ahaad (solitary reports)

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### **Classification of the Sunnah and Value: Legal vs. Non-Legal**

#### *1. What is legal and what is non-legal Sunnah?*

- a. Legal Sunnah, Sunnah Tashree'yah (literally: legislation)
  - i. The exemplary conduct of the Prophet *sal'Allaahu 'alayhi wasallam*, be it an act, saying or a tacit approval which incorporates the rules and principles of the Shari'ah.
  - ii. Wajib
    - 1. *"Pray as you see me pray."* [Bukhari]
  - iii. Mustahaab
    - 1. *"Was it not for my fear of imposing a difficulty on my Ummah I would have ordered that the Miswak be used for every salaah, and delay in Isha prayer."* [Bukhari]
- b. Non-legal Sunnah, Sunnah Ghayr Tashree'iyyah
  - i. The natural activities of the Prophet *sal'Allaahu 'alayhi wasallam* such as the manners in which he ate, slept, dressed and such activities which do not seek to constitute a part of the Shari'ah or the legal norms.
    - 1. The preference of the Prophet *sal'Allaahu 'alayhi wasallam* for certain foods: *Anas reports, "I saw Allah's Messenger going after the pumpkin round the dish, so I have always liked pumpkin since that day."*
    - 2. This is not an act of ibadah (simply to eat pumpkin). However, if your intention was to like something that Muhammad *sal'Allaahu 'alayhi wasallam* liked, then inshallah, the intention will be rewarded.

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3. Abdullah ibn Umar was the quickest to follow the non-legal Sunnah, to the point of taking the same footsteps as Muhammad *sal'Allaahu 'alayhi wasallam* and using the same rest stops when going for hajj.
  4. Some Sunnah practices are difficult to tell whether they are legal or non-legal.
2. *What is Hujjiyyah of each type of Sunnah?*
- a. Legal Sunnah
    - i. It establishes a Hukm Shar'ee. All commands and prohibitions that are imposed by the Sunnah are binding on every Muslim.
  - b. Non-legal Sunnah
    - i. The majority of jurists consider it an indication for permissibility (Mubaah), unless other evidence suggests otherwise.
3. *Khusoosiyyaat An-Nabi*
- a. Certain matters which are particular to the person of the Prophet *sal'Allaahu 'alayhi wasallam*.
    - i. Multiple marriages above the limit of four, connected fasting and the prohibition of remarrying his wives after his death.
4. *What is the ruling of the Khusoosiyyah of the Prophet sal'Allaahu 'alayhi wasallam?*
- a. If the Qur'an addresses the Prophet *sal'Allaahu 'alayhi wasallam* with an exclusive term such as "O ye Messenger" then it is to the Prophet *sal'Allaahu 'alayhi wasallam* alone, unless there is conclusive evidence to suggest otherwise.

Coincidental actions of the Prophet *sal'Allaahu 'alayhi wasallam* such as his prayer inside the ka'bah in a certain position, praying in a specific location on his journeys or taking the pledge on Hudaibiyyah beside a particular tree do not constitute any ruling according to the vast majority of jurists.

## **Chapter Four: Sources about which there is General Agreement**

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### **1. First: Ijmaa' or Consensus of Opinion**

#### *a. Definition*

- i. The unanimous agreement of the Mujtahids of the Muslim Ummah of any period following the death of the Prophet *sal'Allaahu 'alayhi wasallam* on any matter.
  - I. This means 100% agreement, while consensus means almost 100% agreement.



## Part Three: The Sources of Islamic Law

- II. Only Muslim Mujtahids can be involved in this process. Laymen and scholars of other faiths cannot issue legal verdicts.
  - III. It was never used within the Prophet's *sal'Allaahu 'alayhi wasallam* time because there was no need.
  - IV. The Mujtahids are not chosen or picked from a society; they are publicly and universally recognized as Muslim scholars.
- b. Is the Ijmaa' factual or relative evidence?*
- i. Majority of Muslim jurists accept the Ijmaa' as a universal consensus, while other jurists accept it as a valid concept in a relative sense, not as a factual evidence. This is because we cannot be sure that any Ijmaa' after the sahaba's time included all the 'Ulama or not.
  - ii. The only Ijmaa' which they accept as a factual evidence is the Ijmaa' of the Sahaba before they were dispersed.
- c. What is the value of Ijmaa'?*
- i. It reflects the natural evolution and acceptance of ideas in the life of the Muslim Ummah.
    - 1. Selecting Abu Bakr as a caliph.
  - ii. It ensures the correct interpretation of the Qur'an and Sunnah.
  - iii. It enhances the authority of rules that are of speculative origin. For example, the prohibition of simultaneous marriage to the close relative of one's wife.
  - iv. It represents an authority of its own right once it is established.
- d. There are two types of Ijmaa'*
- i. Explicit Ijmaa' or Ijmaa' Sareeh
    - 1. The Ijmaa' in which every Mujtahid expresses his opinion either verbally or by an action.
  - ii. Tacit Ijmaa' or Ijmaa' Sukooti
    - 1. The Ijmaa' in which some of the Mujtahids of a certain age express their opinion concerning an incident while the rest remain silent. This is not technically an Ijma' from a juristic perspective (because not everyone had their say, or they may not have spoken out for some other reason).

### Conditions of Ijmaa'

- *What are the conditions of a valid Ijmaa' ?*
  - Condition one

## Part Three: The Sources of Islamic Law

- There should be a number of Mujtahids available at the time when the issue is encountered.
- Condition two
  - There should be a universal consensus of all the Mujtahids on the issue encountered. The presence of any dissenting view precludes the possibility of the Ijmaa'.
- Condition three
  - The agreement of the Mujtahids on the juridical opinion must be demonstrated by their expressed opinions on that particular issue.

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### 2. Second: Qiyas or Analogical reasoning

#### **a. Definition**

- i. The application to a new case (Far') on which the law is silent of the ruling (Hukm) of an original case (Asl) because of the effective cause (Illah) which is in common to both.
- ii. It is a branch of Ijtihad
- iii. Applied to cases in which the Qur'an and Sunnah is silent

#### **b. What are the essential requirements (Arkaan) of Qiyas?**

- i. First : Asl
  - 1. The original case on which a ruling is given in the text & which analogy seeks to extend to a new case.
- ii. Second: Far'
  - 1. The new case on which a ruling is needed.
- iii. Third: Illah
  - 1. The effective cause which is an attribute of the Asl and is found to be common to the original and the new case.
    - a. Find this in the asl, and can find this in the far' also.
    - b. The Illah never fluctuates, regardless of the case being discussed and it must be generated before deciding upon the Hukm.
- iv. Fourth: Hukm
  - 1. The rule governing the original case which is to be extended to the new case.
    - a. This is based on characteristic/reason which makes it similar to the new case.

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### *c. Example*

- i.** Wine versus narcotic drugs
  - 1.** Asl
    - a.** Wine drinking
  - 2.** Far'
    - a.** Taking narcotic drugs
  - 3.** Illah
    - a.** Intoxicating effect
  - 4.** Hukm
    - a.** Prohibition
- ii.** Gold vs. bank notes
  - 1.** Asl
    - a.** Paying zakah on legal amount of gold.
  - 2.** Far'
    - a.** Paying zakah on currency made of bank notes or other metals.
  - 3.** Illah:
    - a.** The value of all commodities.
  - 4.** Hukm
    - a.** Obligatory

## 3. Conditions of Arkaan Al-Qiyas

### *a. Condition of Asl*

- i.** Asl must be constituted in the Qur'an and the Sunnah and according to the majority of jurists by Ijmaa'.
- ii.** Asl may not be constituted by a former Qiyas.

### *b. Conditions of Far'*

- i.** The new case may not be covered by the text or Ijmaa'.
- ii.** The effective cause of the analogy must be applicable to the new case in the same way as to the original case.

### *c. Conditions of the Illah*

- i.** The effective cause must be a constant attribute (Mundhabit) i.e. applicable to all cases without being affected by differences of persons, time, place, and circumstances.
- ii.** The Illah must be evident not hidden.

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- iii. The Illah must be a proper attribute and bears a reasonable relationship to the law of the text.
- iv. The Illah must be an objective quality which can be transferable to other cases.
- v. The Illah must not be an attribute that runs counter to or seeks to alter the law of the text.

### **d. Conditions of hukm**

- i. The hukm must be of a practical ruling of Fiqh.
  - ii. The hukm must be operative, not abrogated.
  - iii. The hukm must be rational or the Illah is clearly given in the text itself.
  - iv. The hukm must not be confined to an exceptional situation or to a particular state of affairs.
- Qiyas is the most dynamic part of Usool Al-Fiqh which is what makes the Shari'ah so alive and contemporary.
  - The Illah and Hikmah are not interchangeable. The Illah for shortening prayers while traveling, for example, is that one is traveling. Therefore, any person who is traveling may shorten the prayers. The hikmah is that journeys are difficult, and so prayers are shortened. However, even if you have an easy journey, it doesn't mean you cannot shorten your prayers.

## **Chapter Five: Sources about which there is General Disagreement**

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### **1. Statement of the Sahabi**

#### **a. Definition**

- i. Should the statement of a single Sahabi which does not contradict the general opinion of the community of the Sahaba be considered as a proof of its own right, and be given a precedence over other rules such as Qiyas?
- b. The Prophet *sal'Allaahu 'alayhi wasallam* told us to follow his example and the khulafaa' that will follow after him. Some scholars say that their Ijtihad should be found as proof and some don't.

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- c. Ibn Abbas said that the temporary marriage is acceptable to do in harsh conditions, even though all the other Sahaba say that this is unacceptable.
  - In this case, some scholars say the opinion is invalid.
  - Others say they would rather take the Ijtihad of the Sahaba than take their own.

### 2. 'Urf (Custom)

#### a. Definition

- i. It is recurring practices that are acceptable to people of sound nature, reasonable as to be taken in consideration in order to constitute a valid basis for legal decisions.
- b. For example, languages can use the same words and mean totally different things.
- c. Whenever we do things, we need to know what the custom of the land is before doing anything.

### 3. Istihsaan (Juristic Preference)

#### a. Definition

- i. It is setting aside an established analogy in favor of an alternative ruling that serves the ideals of justice and public interest in a better way.
- ii. Should not be against Qur'an or Sunnah, but against Qiyas.
- b. Should the Mujtahid use his personal discernment in deciding the ruling of an issue in contradiction to the established Qiyas?
- c. Example:
  - i. The Prophet *sal'Allaahu 'alayhi wasallam* said that you cannot sell something that doesn't exist.
    - 1. The scholars say that you can put conditions on items such that when the people invent items, it will be clear cut on what they are getting.

### 4. Maslaha Mursala or Istislaah (Consideration of Public welfare)

#### a. Definition

- i. It is a consideration that is proper and harmonious with the objectives of the Lawgiver; it secures a benefit or prevents a harm, and the Shari'ah provides no indication as to its validity or otherwise.

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- ii. Does this concept fall under innovation or independent enactment of law? Can Maslaha Mursala be observed in devotional matters? No
- b. Example: A woman whose husband is missing can file for divorce after 1 to 4 years even though her husband is not proven to be dead because it would be in her best interest to get a divorce.

### **5. Istishaab (Presumption of continuity)**

#### *a. Definition*

- i. It is a rational proof that may be employed in the absence of other indications; specifically, those facts or rules of law and reason, whose existence or non-existence had been proven in the past and which are presumed to remain so for lack of evidence to establish any change.

### **6. Sadd Al-Dharaa'I (blocking the means)**

#### *a. Definition*

- i. Blocking the means to an expected (evil) end that is likely to materialize if the means towards it is not obstructed.
- b. This is why in Saudi Arabia it is forbidden for women to drive cars, and for farmers to sell grapes to wine makers.

### **7. Shar'u man qablana (Laws revealed prior to the advent of Islam)**

- a. Are the rules revealed before the advent of Islam applicable to the Muslims?
- b. If these laws contradict our laws – they are not to be taken
  - i. Example: Yusuf's *alayhis salaam* brothers prostrated to him, but that is wrong according to our Shari'ah